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ACCIDENT.

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Otherwise in Ireland. 186.

Nor for bringing up children in the Roman Catholic faith. 186.

Nor to teach natural theology. 186.

Nor to teach the Jewish religion. 186.

Nor to re-establish the supremacy of the Pope. 186.

Nor for the political restoration of the Jews to Jerusalem. 186.

Nor to buy and distribute such books as might have a tendency to promote virtue, religion and the happiness of mankind. 186.

Nor to repair tombs. 186.

Nor to undertakings of general utility. 186.

Nor to ten poor clergymen, to be selected by the trustee. 186.

Nor for the discharge of poachers, committed to prison for the non-payment of fines. 187.

Bequest to diffuse more generally the blessings of education, civilization and Christianity throughout the U. S. and elsewhere, is void. 187.

CHATTEL MORTGAGES.

CONSTRUCTIVE NOTICE.

Of mortgage on grain in bin or crib, is not given by a recorded mortgage upon the same grain, while growing. 572.

CROP.

May be mortgaged before planted. 189.

DESCRIPTION.

When defective, does not prevent the mortgage being binding upon one who has actual notice of its existence. 572.

What is sufficiently definite and certain. 572.

GOOD-WILL.

Of newspaper cannot be sold under foreclosure proceedings, after all its tangible property is gone. 122.

INSTALMENT LEASE.

Is a conditional sale, not a chattel mortgage. 122.

LIEN OF LIVERY STABLE KEEPER.

Upon horse, is subject to a recorded chattel mortgage. 503.

MACHINERY.

In factory, when mortgaged for the purchase price, will be considered as personal property, as between the chattel mortgagee and a prior mortgagee of the realty. 312.

PRIORITY.

Chattel mortgage, properly executed to secure a *bona fide* debt, takes precedence of a previous real estate mortgage, in which personalty is also mentioned and attempted to be mortgaged, without complying with the statutory requisites. 291.

CHECKS. See **BANKS.****PAYMENT OF DEBT.**

By check, when not constituted. 787.

REVOCATION.

May be made at any time before presentation, unless accepted or certified. 312.

CITIZENS.**BIRTH.**

Child born of Chinese parents in U. S. is a citizen, and his father cannot alter his *status*. 58.

Nor is he subject to the Chinese restriction and exclusion Acts. 122.

COPYRIGHT LAW.

State is not a citizen within meaning of. 123.

COMMERCIAL AGENCIES.**COMMUNICATIONS.**

Publications as to the standing of merchants, communicated to subscribers generally, are not privileged. 125.

But such communications are privileged, when made in good faith to one having an interest in the information sought, or when volunteered to one having an interest, if he stands in such relation to the person by whom the communication is made, as to render it proper that the information should be given. 258.

Are not entitled to any greater privilege than communications by other persons. 258.

EMPLOYEES.

Statements made by employees of a commercial agency in the course of its business, are entitled to the same privilege as if made by the proprietor. 260-1.

FALSE REPRESENTATIONS.

When made to a commercial agency with fraudulent intent, and communicated to a subscriber, who is induced thereby to extend credit, are a fraud upon the latter. 263.

LIABILITY TO SUBSCRIBERS.

Commercial agencies are bound to use ordinary care and diligence in collecting information which they furnish to subscribers, and, if they fail to do this, are liable for the damages occasioned. 262.

But they are not liable in Canada for giving false information verbally. 262.

Elsewhere it has been held otherwise. 263.

Liability may be limited by a clause in the contract. 263.

MALICIOUS REPORTS.

Communications, otherwise privileged, are not so, if made with malice in fact. 261-2.

NOTIFICATION SHEETS. See **COMMUNICATIONS.**

Sent to all subscribers, are not privileged. 257, 260.

SERVICE OF PROCESS.

On correspondent of a commercial agency, who furnishes it with information from a State where it has no office, is sufficient. 263.

COMMON CARRIERS. See **BILLS OF LADING, RAILROADS, TELEGRAPHS, TELEPHONES.****FREIGHT.**

Contract to carry, at less than the published schedule, is not an "undue or unreasonable discrimination," unless the privilege is exclusive. 788.

CONSTITUTIONAL LAW. See **TELEGRAPHS.****CABINET OFFICERS.**

Are, with their subordinates, subject to the jurisdiction of the courts to compel the performance of ministerial duties. 355.

CONSTITUTIONAL LAW—(continued.)

CHINESE EXCLUSION ACT.

Is not unconstitutional. 122.

CITIZENSHIP.

Distinction between citizenship of the State and the United States. 130.

COMMERCE CLAUSE.

In Constitution of the United States, has, more than any other one grant of power, helped to establish the Nation. 735.

Such was the intention of the framers of the Constitution. 735.

The constitutional law of the commerce clause to-day is practically the law of the first commerce case decided by the Supreme Court. 735.

Decisions of the Supreme Court of the United States in cases arising under the commerce clause, discussed. 735-47.

Three different views have been promulgated in the Supreme Court as to the extent of the commerce power. 737.

The earlier view. 737.

The non-exclusive view. 739.

The modern view. 740.

The Wheeling Bridge case. 743.

Modifications of the doctrine of the Wheeling Bridge case. 744-5.

While giving due force to the commerce power of Congress, the Supreme Court has maintained the absolute supremacy of the States over their purely internal affairs, free from Federal interference. 745.

CONGRESS.

Has no power to change the office of an army officer, although it may alter his rank. 704.

DELEGATION OF POWER.

Railroad commission, authorized to regulate charges for the transportation of passengers and freight, may be constituted by statute, notwithstanding a constitutional provision forbidding the delegation of legislative power. 252.

FEDERAL COURTS.

May mandamus the Executive of a State. 354.

But not to enforce duties imposed by Congress. 355.

FOURTEENTH AMENDMENT.

Prohibits municipality from appropriating land for a public street and assessing the remaining land of the owners for all costs and expenses, without first making compensation for the land taken. 123.

Does not prohibit the imposition of punitive damages upon a railroad for stock killed, by reason of the failure to fence its track. 123.

Prohibition by State of manufacture and sale of intoxicating drinks does not contravene. 129.

Nor prohibition of manufacture and sale of oleomargarine. 129.

Marks the culmination of the struggle for supremacy of Nation over State. 133.

GOVERNOR OF STATE.

Is not subject to the jurisdiction of the State courts to compel or restrain the performance of any official duty, whether executive or ministerial. 341, 350.

Cannot be enjoined from issuing a certificate of election to membership in Congress. 341.

Nor mandamus to issue a commission to one claiming to be duly elected to an office. 350.

But there is a conflict of authority as to the power of the courts to control the Executive in the exercise of purely ministerial duties. 350-1.

Decisions affirming such power. 351-2, 358.

Decisions denying such power. 352-3-4.

Summary of the decisions. 354.

CONSTITUTIONAL LAW—(continued.)

Decisions discussed. 356-7-8.

Of Indiana, possesses the sole right to fill vacancies by appointment in all State offices of a general character. 687.

INTERSTATE COMMERCE.

Damages may be allowed by a State statute for the loss of cattle by reason of Texas fever, contracted from other cattle, which have not wintered north of the southern boundary of Missouri or Kansas; such status is not a restrictive on interstate commerce. 252.

State statute, prohibiting the taking within the State of orders for spirituous liquors, to be delivered at a place without the State, knowing or having reasonable cause to believe that the same will be transported into the State, is not unconstitutional, as a restriction on interstate commerce. 572.

JUDICIAL OPINION.

Of Supreme Judicial Court of Massachusetts cannot be required by the Legislature as to the construction of a statute, which the Legislature has the power to alter or amend. 572.

LEGISLATURE.

Possesses only such power as the people have delegated to it by the Constitution. 687.

Has no power to create a general State office and fill it by election, unless specially empowered to do so by the Constitution. 687.

A power to prescribe by law the manner in which State officers shall be chosen, conferred by the Constitution, does not authorize the Legislature to elect or appoint such officers directly. 687.

Cannot be given by statute, under the Constitution of Indiana, the power to elect members of boards of control for cities of a specified class. 701.

In California, statutes authorizing the filling of State offices by the Legislature, have been held valid. 705.

So also in Maryland. 705.

In Missouri. 706.

In Nevada. 706.

In New York. 706.

And in Oregon. 708.

But in North Carolina and Ohio, similar statutes have been pronounced unconstitutional. 707.

LICENSE TAX.

Imposed by State on express companies engaged in interstate transportation, is unconstitutional. 788.

LIMITATION ON STATES.

Tendency of Supreme Court of U. S. considered. 131.

In the formative period of the Nation's development, this tendency was centripetal. 131.

And, since the war and the adoption of the amendments, the National principal has been maintained and extended. 133.

But the tendency is now centrifugal. 134.

PRESIDENT OF THE UNITED STATES.

It has never been decided whether the President is subject to mandamus to compel the performance of a ministerial duty. 355.

But he cannot be enjoined from carrying into effect an Act of Congress alleged to be unconstitutional. 355.

REGISTRATION LAW.

Discriminating between persons practising dentistry, is unconstitutional. 788.

STATE SOVEREIGNTY.

To what extent States may legislate, as governments, concerning their own internal affairs. 130.

Where private property is devoted to a public use, it is subject to

CONSTITUTIONAL LAW—(continued.)

State regulation in respect to the charges for such use, imposed on the public. 131.

Sovereignty of State within Nation, as recognized by the Supreme Court of the U. S., is the true State Sovereignty of the Constitution. 140.

STATE STATUTE.

Prohibiting the sale of dressed meat, unless the animal within twenty-four hours before slaughter was inspected by State officers, is unconstitutional. 788.

STATUTE.

Imposing collateral inheritance tax, does not conflict with the Fourteenth Amendment. 503.

Rendering corporation absolutely liable for injuries done to property in the prosecution of its lawful business, does not provide "due process of law." 503.

Forbidding "any agent traveling with one or more horses" to "sell any lightning rod, sewing machine, or organ, or other musical instrument," without a State license, is not unconstitutional. 503.

"Fixing the time for the opening and closing of saloons and gaming houses" does not embrace more than "one subject and matter properly connected therewith." 503.

STATUTORY DAMAGES.

Statute imposing liability upon every railroad corporation which shall damage or kill any horse by running against it with an engine, is unconstitutional. 313.

Statutory limitation of liability of railroads for personal injuries or death sustained through their negligence, does not constitute a contract between the State and an accepting railroad company, and may be repealed. 319.

SUPREME COURT OF THE UNITED STATES.

General view of the development of the Constitution under the interpretation of the Supreme Court. 733-4.

TAXATION.

Exemption from, of township poor-farm may be made by Legislature, although expressly authorized by an existing statute, subsequent to which the poor-farm was conveyed by the township to a municipal corporation. 445.

TRIAL BY JURY.

Misdemeanors, whose punishment involves deprivation of liberty, as well as felonies, are within Art. III. Const. U. S. 58.

Sixth Amendment does not supplant Art. III. Const. U. S. 59.

CONTEMPT OF COURT.**ATTEMPT TO BRIBE JUROR.**

Is a contempt of court. 788.

PUNISHMENT.

When committed in presence of Court, a contempt may be punished without notice to the offender and without a hearing. 123.

CONTRACTS. See HUSBAND AND WIFE.**ACCORD AND SATISFACTION.**

Settlement between attorneys, who have jointly conducted a case, is conclusive, though one is subsequently paid an additional fee by the client. 188.

LEX LOCI.

Where goods are ordered by letter from a dealer in another State, and shipped from there according to order, the contract is not subject to the law of the State where the purchaser resides. 503.

MACHINERY.

Of mill, if not put in according to contract, need not be taken out to

CONTRACTS—(continued.)

avoid payment of the entire contract price, but the measure of damages will be the cost of making it conform to the contract. 504.

RECOVERY.

May be had for part performance, where contract is not entire. 123.

RESTRAINT OF TRADE.

Agreement by a barber not to work for any one beside the other party to such agreement, nor to open shop for himself, in a specified town at any time, is unreasonable and will not be enforced. 503.

Competing firms may agree not to handle certain goods in competition in a specified district, but such agreement will not bind a corporation formed by members of one of such firms and others. 503.

Covenant not to manufacture or sell a secret medicinal compound in certain specified territory, is not contrary to public policy. 666.

COPYRIGHT. See CITIZENS.

APPLICATION FOR LIQUOR LICENSE.

Is a subject of valid copyright. 313.

PHOTOGRAPH.

Designed to illustrate a musical composition, is infringed by stamping an imitation on leather chair bottoms and backs. 313.

STATE REPORTER.

Opinions and other work of judges published in official reports, issued under authority of a State, are not protected by a copyright taken by the official reporter for the State. 123.

STATUTORY NOTICE.

Omission of year and name, or of either, in the statutory notice of a copyright, bars an action for infringement, even by one who otherwise had express notice. 666.

CORPORATIONS. See BANKS, BILLS AND NOTES, FIRE INSURANCE, LIQUOR LAWS, SLANDER, WATER RIGHTS.

BONDHOLDERS.

Mortgage bondholders, who subscribe to debenture bonds, the subscriptions to be paid as called for, are not liable as subscribers to capital stock. 189.

BONDS.

Payment of interest cannot be refused on the ground that forged bonds are in circulation and that the bondholder declines to accept new bonds, issued to defeat the forgeries, in exchange for those already held by him. 123.

DEED.

To corporation, signed and acknowledged by the grantor before the charter is granted, and placed in escrow to be delivered upon the grant of the charter, takes effect as a conveyance from the date of such delivery. 504.

DE FACTO CORPORATION.

Contract with, cannot be repudiated on the ground that the corporation is not legally organized, or that the law under which it was organized is unconstitutional. 572.

DIRECTORS.

Of an insolvent corporation, are trustees for its creditors, and cannot secure their own claims against the corporation, so as to gain priority over the other creditors. 788.

JUDGMENT.

Against corporation, is conclusive upon a stockholder. 504.

OFFICERS AND DIRECTORS.

May purchase debts owing to corporation, after an assignment for the benefit of creditors and a sale of its assets. 252.

PRESIDENT.

Authority of, to execute note, discounted for a corporation's benefit, cannot be disputed. 59.

CORPORATIONS—(*continued.*)

STATUTES.

Words, "person" or "persons," when used in statutes, include corporations, both private and public. 286.

STOCKHOLDER.

Cannot be enjoined from voting that the corporation engage in a certain business, at the suit of a subscriber to the stock, who has been induced to subscribe by the assurance of the stockholder that the corporation would not carry on such business. 788.

STOCK SUBSCRIPTIONS.

Constitute (1) a contract between the subscribers to become stockholders when the corporation is formed, and (2) a continuing offer to the proposed corporation, which, upon acceptance, becomes a contract as to each subscriber. 300.

Delivery of a subscription paper to the promoter of a proposed corporation by a subscriber renders it a binding contract. 300.

An oral condition, accompanying such delivery, is not binding upon the other subscribers, nor upon the corporation, when formed. 300, 313.

The general rule of evidence that a written contract is not to be contradicted or varied by evidence of a parol agreement, is applied to cases of subscription to the stock of corporations. 306.

There is no distinction in the rule between cases of proposed and existing corporations. 306-7.

Authorities examined. 307-8-9.

The subscription inures to the benefit both of the subscribers and of the corporation, when formed. 310, 313.

But the corporation is the proper party to bring suit. 310.

Subscriber cannot set up fraud of the directors, in order to defeat his contract. 311.

Upon an assignment by a subscriber for the benefit of creditors, his assigned estate is liable upon the whole amount of the subscription, although no calls have been made. 313.

Agreement among stockholders, whose subscriptions have not been made public, made in good faith and before debts have been incurred, to take full-paid stock to the amount actually paid on their subscriptions, instead of the actual amount of stock subscribed for, is valid as against creditors. 381.

Agreement by incorporators to take the shares of one of the subscribers within a fixed time, if he should so desire, and refund his money, made without fraudulent intent, is valid. 666.

ULTRA VIRES.

Unauthorized subscription to stock of one corporation by another is void. 59.

CRIMINAL JURISDICTION.

ACCESSORY.

Accessory before the fact can be tried only where the act of accessoryship took place. 31.

COUNTY COURTS.

Offences must be tried in the county where the criminal act took place. 29.

FEDERAL COURTS.

Federal Courts have no common law criminal jurisdiction. 22.

By statute their jurisdiction extends to crimes committed:

On High Seas. 23.

" Great Lakes. 23.

In Territories. 24.

" Seat of Government, forts, magazines, arsenals, dock-yards and other U. S. buildings, within the limits of States. 25.

CRIMINAL JURISDICTION—(continued.)**LOCALITY AS AFFECTING JURISDICTION.**

- In abortion. 41.
- " bigamy. 33.
- " burglary. 38.
- " false pretences. 39.
- " forgery. 40.
- " homicide. 33.
- " larceny. 35.
- " libel. 39.

PRESENCE OF CRIMINAL.

Personal presence of offender where the crime is perpetrated, is not always necessary to confer jurisdiction. 30.

STATE COURTS.

States possess exclusive power to punish crimes committed within their own limits, except so far as this power has been surrendered to U. S. 29.

CRIMINAL LAW. See JURISDICTION, LIQUOR LAWS, SUNDAY LAWS.**BURGLARY.**

Is constituted by breaking into a cellar, having no internal connection with the house. 504.

CITIZENS OF U. S.

Resident in a foreign country, under treaty protection and surrendered by the foreign government, because charged with crime, upon the demand of a State governor, after the U. S. Government had refused to ask his extradition, may be tried by the State courts. 445.

CONSPIRACY.

Is triable by a jury at common law and cannot be tried in a police court, even where the right of appeal is given. 124.

EMBEZZLEMENT OF LETTER.

By post-office employe, is constituted, although the letter was a decoy. 504.

CO-DEFENDANT.

Absence of, cannot be used to establish the guilt of the accused. 709.

EVIDENCE.

Narration of transaction, given by injured man a few minutes after its occurrence and after the accused had left, is not admissible in a homicide case as part of the *res gestæ*. 445.

FORMER JEOPARDY.

Reversal and new trial, granted on appeal of defendant, who asked for reversal only, does not bar further prosecution. 59.

Discharge by court, after commencement of trial, for the purpose of trying the prisoner upon another complaint, operates as a bar to another trial for the first offence charged. 382.

Under what circumstances former jeopardy may be pleaded. 504.

When former acquittal is a defence to a prosecution for perjury. 572.

INSANE DELUSION.

Definition of. 789.

Will not excuse crime, unless the imaginary facts would, if true, render the crime excusable. 789.

INSANITY.

Must, to constitute a defence to crime, be established by preponderating evidence. 789.

Does not excuse one who has sufficient reason to know that his act is wrong and deserves punishment. 789.

JUROR.

Is competent to serve in a capital case, notwithstanding an opinion formed from reading newspapers, if he says that he can render a verdict according to the evidence, uninfluenced by such opinion. 505.

CRIMINAL LAW—(continued.)

JURY.

Drinking of intoxicating liquor by, while deliberating on their verdict, is cause for setting the verdict aside. 445.

MISCONDUCT OF JURY.

The indulgence by the jury, after being charged and retiring, and before agreeing upon their verdict, in wine and cognac, even in a moderate degree, is sufficient ground in California for setting aside the verdict. 709, 725.

But there is a conflict of authority as to the correct rule to be observed under such circumstances. 724.

In Iowa, it has been held that the drinking of intoxicating liquor by a jury, after having retired to consider their verdict, vitiates the verdict, irrespective of the question of their intoxication. 725.

So also in Indiana. 726.

In Louisiana, the Court will consider the question as to whether the amount of liquor drank was sufficient to affect the judgment of the jurors. 724.

In New York, the authorities do not agree. 726.

In Texas, the stringent rule of the California courts was originally adopted, but this has been modified by statute, and the verdict cannot now be set aside on this ground, unless it is shown that a juror has actually become intoxicated. 726.

In Missouri, the verdict will be allowed to stand, unless it be shown that the drinking of liquor affected it, or that the drink was furnished by an interested party. 727.

The same rule has been adopted in Mississippi, Montana and Virginia. 727.

And apparently in Ohio. 727-8.

General rules. 728.

PROSECUTING ATTORNEY.

Has no right to argue at the same time for the admission of evidence, and as to the effect of such evidence, if admitted, and, if permitted by the court to do so, it is error, for which a reversal will be granted. 709.

POSTAL LAWS.

Whether a particular publication is in violation of the postal laws, must be determined by the jury, under instructions from the court as to the meaning of the statutory words. 573.

RAPE.

Unchastity of prosecutrix may be shown, when the defence is consent. 573.

RES GESTAE.

Statements made by one fatally wounded, immediately after he received his injuries to a person whom he called to his assistance, and ten minutes later to a personal friend, are admissible in evidence on the trial of persons charged with his murder, as part of the *res gestae*. 730.

DAMAGES. See ADMIRALTY, CONSTITUTIONAL LAW, LIABILITY FOR CAUSING DEATH, PLEADING, RAILROADS, SUNDAY LAWS, TELEGRAPHS.

EXCESSIVE DAMAGES.

A verdict for \$7000, as damages for a rupture sustained by a man fifty-eight years of age, and engaged in the piano trade, earning \$300 per month, is not excessive. 666.

PROSPECTIVE DAMAGES.

May be recovered in action against a municipal corporation for injuries sustained by falling into an excavation dug under municipal authority. 666.

DAMAGES—(continued.)

LAND.

Flooding land by cutting ditch embankments is not an additional element of damage by a railroad, which has paid for taking the adjoining land, and the "incidental damage to land not taken." 59.

Spreading of a railroad embankment is not contemplated in an original grant of the right of way, and the land owner may recover for injuries sustained thereby. 124.

RELEASE.

False and fraudulent representations by an agent of a railroad company vitiates a release of damages to which they were the inducement. 59.

WHAT ARE EXCESSIVE.

For the loss of both legs by a young boy, \$30,000 is an excessive verdict. 573.

DEBTOR AND CREDITOR.

FAILING DEBTOR.

Is not permitted to convey, mortgage, nor confess judgment. 371.
But if he contemplate continuance in business, he may do any of these things, so long as he does not thereby prevent himself from actually going on with his business. 371.

All preference among creditors is forbidden in—

Alabama. 372.

Arizona. 373.

Illinois. 373.

Iowa. 374.

Kentucky. 375.

Louisiana. 376.

Maine. 375.

Maryland. 375.

Massachusetts. 376.

New York, to corporations and limited partnerships. 376.

Ohio, to corporations and limited partnerships. 378.

Texas. 379.

Washington. 380.

But in Iowa a partial assignment may be made, unless the intention to make a general assignment exists. 374.

In New York a preference not exceeding one-third of the estate, after deducting wages, salaries, costs and expenses, is allowed to be made by debtors, except corporations and limited partnerships. 377.

In Ohio it is undecided whether an individual debtor, or a partnership, may give preferences. 379.

In Texas a mortgage may be given and payment in property may be made, when the mortgagee and purchaser act in good faith. 380.

In other States preferences in the assignment for the benefit of creditors are forbidden, but the debtor may prefer in other ways. 372.

And in still other States preferences, either by the assignment or otherwise, are allowed. 372.

FRAUDULENT PREFERENCE.

When an insolvent debtor transfers substantially all his property to a part of his creditors, the form of the transfer or transfers will be disregarded, and a statute forbidding preferences in assignments for the benefit of creditors will be held applicable in equity to authorize proceedings for an equal distribution of the assets among all the creditors. 359.

Names of the particular instruments used for such transfers will be disregarded in equity, and the only question considered will be, whether the debtor has, in good faith and without a purpose of discontinuing business, compromised his liabilities by sale or transfer of his property. 359.

But an attempt to obtain an illegal preference will not deprive a creditor of his proportionate share in the estate of the insolvent. 359.

DEBTOR AND CREDITOR—(*continued.*)

MORTGAGE.

By insolvent on his entire stock of goods to certain specified creditors, is equivalent to a general assignment. 789.

PART PAYMENT.

Is not a sufficient consideration for the release of a joint maker of a promissory note from all liability thereon. 789.

DESCENT.

ILLEGITIMATE CHILD.

Born in Pennsylvania and rendered legitimate by the subsequent marriage and cohabitation of its parents in that State, will inherit lands from its father in New Jersey. 730.

DEED. See CORPORATIONS, ESCROW, MARRIED WOMEN.

ALTERATION.

By grantee, before registration, by substituting his wife's name for his own, renders a deed inoperative. 382.

ANCIENT DEED.

May be challenged on the ground of forgery. 382.

APPURTENANCES.

Includes an irrigating ditch and water-right necessary to the use and enjoyment of the premises conveyed. 124.

When used in deed, term "appurtenances" does not create an easement, where none existed before. 253.

CONTRACT OF SALE.

Conditions in, do not restrict the effect of a subsequent absolute deed for the same land. 313.

DELIVERY.

Necessary to constitute an executed conveyance. 99.

But may be inferred from circumstances. 100.

ESTATE IN ENTIRETY.

Is given by a deed conveying land to husband and wife. 252.

FRAUD.

In an action to cancel a deed on the ground of fraud, "satisfactory proof" only of such fraud is requisite. 505.

RE-EXECUTION.

May be compelled, when an unregistered deed has been wrongfully destroyed by the grantor after delivery, and the grantee cannot waive the tort and recover back the consideration. 505.

REFORMATION.

Will be decreed only when the evidence shows beyond controversy that the mistake was mutual. 445.

RIGHT OF WAY.

Cannot be granted by parol, and, when not of necessity, does not pass by a conveyance of the common owner. 253.

DIVORCE. See MARRIAGE.

DOMICILE.

LUNATIC.

Alleged lunatic, pending proceeding for the appointment of a guardian, can, if mentally capable, change his domicile to another State. 382.

DONATIO CAUSA MORTIS.

DELIVERY.

Is essential to validity of, even though the property is already in the possession of the donee. 314, 382.

DOWER.

STATUTE OF WESTMINSTER 2.

To sustain a plea in bar of dower under the Statute, it is necessary to prove both that the wife deserted her husband willingly and that she was guilty of adultery during the desertion. 730.

DOWER—(continued.)**VALUATION.**

Of lands aliened by husband, is to be determined as of the time of valuation, deducting whatever increase may have arisen from the labor and money of the purchaser. 667.

EASEMENT. See DEED.**DITCH.**

Must be kept in repair by the owner of the easement, not by the owner of the fee. 505.

ELECTIONS. See EVIDENCE.**BALLOTS.**

Erasure of printed name on a ballot and writing opposite another name, requires the vote to be counted for the candidate whose name is written. 252.

RETURNING BOARD.

Rejection of returns by canvassers, whose action binds no one, is immaterial in a subsequent contest. 60.

EMINENT DOMAIN.**MORTGAGEE.**

Is bound by the consent of a mortgagor in possession to a railroad's entering upon and constructing its line across the mortgaged premises. 314.

NON-RESIDENT.

Is bound by published notice of proceedings to take his lands for railroad purposes. 505.

EQUITY. See DEED.**INJUNCTION.**

To restrain erection of a fence, when granted. 506.

RECONVEYANCE.

Of property transferred to an agent for the purpose of defrauding creditors, will not be decreed. 789.

SPECIFIC PERFORMANCE.

Will not be decreed of an agreement to take care and provide for one in case of "general debility or sickness." 446.

ERROR.**INJUNCTION.**

Perpetually forbidding the removal of minerals from certain land and ordering an account of those already taken, is not a final decree and cannot be appealed from. 789.

RIGHT TO APPEAL.

Under a statute limiting such right to cases where the matter in dispute, exclusive of costs, exceeds \$5,000, is not given, where the judgment is for \$5,000 and costs, but not with interest. 446.

TRIAL BY CONSENT.

Before a judge of U. S. Circuit Court at chambers, under an agreement authorizing the judge to either decide the case or submit it to a jury, cannot be reviewed by the Supreme Court. 506.

UNITED STATES.

May appeal from a judgment entered against the Government under the Act of March 3, 1887, irrespective of the amount of such judgment. 667.

ESCROW.**AGENT.**

Delivery to, is delivery to the party. 105.

So also, to an officer of a corporation. 105.

CONDITION.

Must be performed by the grantor, not the grantee. 110.

May be either in writing or by parol. 112.

ESCROW—(continued.)

DEFINITION.

Escrow defined. 103.

DELIVERY.

Will be enforced in equity, when the condition is performed. 108.

In some instances relates back to the first delivery. 109.

As where the grantor dies before the performance of the condition. 110.

GRANTEE.

May act as agent of the grantor to transmit to the holder. 99, 106.

HOLDER IN ESCROW.

Cannot be a party to the instrument. 103.

Conditional delivery to party cannot be made. 104.

Modification of this rule. 104.

PURCHASERS.

Rule as to *bona fide* purchasers. 111.

STATUTE OF FRAUDS.

An escrow is not sufficient to take a deed out of the statute. 112.

SUBJECT OF.

Any instrument, having the essentials of a contract, may be delivered in escrow. 102.

But it must be a completed instrument. 103.

TITLE.

Remains in the grantor until performance of the condition. 108.

Effect of a judgment pending final delivery. 108.

Time of passing is a question of intention. 110.

Does not pass to a grantee wrongfully obtaining possession of the instrument before performance. 110.

When a deed placed in escrow, to await the performance of a condition, is delivered to the grantee before full compliance with such condition, which is subsequently completed, the deed takes effect from the time of such full completion. 505.

WORDS OF DELIVERY.

No special form is necessary to constitute an escrow. 106.

But the grantor must part with all control of the instrument. 106, 107.

And delivery to the grantee must depend upon the performance of some condition, not merely on lapse of time. 107.

Rule different in case of a gift. 107.

Condition may consist in the payment of money. 108.

EVIDENCE. See ATTORNEY-AT-LAW, CRIMINAL LAW, DEED. NEGLIGENCE, RAILROADS, WILLS.

ADMISSIONS.

By railroad conductor, made after the occurrence of an accident, are not admissible in evidence as part of the *res gestae*. 506.

ATTORNEY-AT-LAW.

Is a competent witness, in an action for his fees, to prove the value of his services. 529.

Also to prove the charges of other attorneys for like services. 529.

In an action by an attorney for his fees, in a certain proceeding, evidence that the attorneys on the other side charged less than the amount claimed by him, and that their services were of as great or greater value, is inadmissible. 529.

CROSS-EXAMINATION.

Court may interfere to prevent unseemly scenes between counsel and a witness, by stopping the course of the examination. 60.

ELECTIONS.

Ballots constitute the best evidence of the choice of the voters, but the burden rests upon the contestant to show that they have been kept intact and are the identical ballots cast at the election. 252.

EVIDENCE—(*continued.*)

EXPERTS. See MEDICAL EXPERTS.

Hypothetical questions may assume any state of facts which there is evidence tending to prove. 60.

Definitions of "expert." 487-8-9-90-1.

How far experience is necessary to constitute an expert. 491-2, 498.

How far one who has studied a profession or occupation, but who is without practical experience of the question under examination, may testify as an expert. 493-4.

Decisions holding that profession or occupation, and experience, are both necessary. 494-5.

Rule in case of—

Post mortem examination. 495.

Poison. 496.

Effect of drugs. 497.

Mental condition. 497.

Weight to be given to the testimony of an expert. 498-9.

FAILURE TO CALL WITNESS.

Under a statute providing that evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, comment to the jury upon the failure of a party to introduce his wife to corroborate his own testimony, is proper. 271.

FORMER TESTIMONY.

Under California Code, when it is sought to impeach a witness, by asking him what he said at a former trial, he must first be shown his former statements, if reduced to writing, and have them read to him, if he is not acquainted with the language in which they have been written. 709.

JUDICIAL NOTICE.

General rule as to. 193-4.

Three classes of facts will receive judicial notice: (1) Matters of public law, which all are bound to know. (2) Matters so notorious as to be regarded as universally known. (3) Matters particularly within the cognizance of the particular court. 194.

Judicial notice will be taken of—

National flags and seals. 195.

Foreign judgments. 195-6.

Law of nations. 196.

Law merchant. 197.

Notarial certificates and seals. 197.

Almanacs. 197.

Of certain facts not existing in U. S. by English courts. 197-8.

Existence, tenor and time of taking effect of public statutes. 198.

State laws and judicial decisions, by U. S. Courts. 199.

Charters of municipal corporations. 201.

Acts incorporating banks. 202.

General laws incorporating railroad companies. 203.

Statutes declared by legislature to be public acts. 203.

Journals of legislature. 204-5.

Constitutions and constitutional amendments. 205.

Common law. 205.

Treaties. 206.

Public institutions. 206.

Customs, when so general in character as to be universally known. 321.

Prominent geographical facts and features of the country. 323-6.

In admiralty, the situation of a town upon a river in a foreign country, and the existence of a bar at the mouth of the river. 323-4.

Boundaries of a State, extent of its territorial jurisdiction, and its civil divisions, created by public laws. 324.

EVIDENCE—(*continued.*)

- Government surveys and legal sub-divisions of the public lands. 325.
- Distance between well-known cities and the ordinary speed of railway trains between the same. 326.
- Public history affecting the whole people. 326-7-8.
- History of the particular State, and its topography and condition. 329.
- Day of holding general election and officers to be elected. 330.
- Accession of persons to, and holding of, offices under the Constitution. 330-1.
- Signatures and certificates of public officers. 332.
- Terms and judges of inferior courts. 449-50.
- Who are justices of the peace within the county where the Court is held. 449.
- Officers of U. S. Courts, by Territorial Courts. 449, 451.
- Requirement in another State of probate and registry. 450.
- Seal of State Court. 450.
- County in which a designated town is located. 450-2.
- Matters of record in the records of the case under consideration. 450-1-2.
- Jurisdiction and seal of certain courts. 451.
- Salary of judge of inferior court. 451.
- Names of counties in the State. 451-2.
- Laws of State, as contradicting allegations in pleadings. 451-2.
- Expirations of charters. 451.
- Signatures of court officers and attorneys on papers executed in the course of their official or professional duties. 452.
- Facts within the judge's official knowledge. 452-3.
- Regular course of nature. 453-4.
- Usual course of agriculture. 453.
- Majority of parties, from the time of their ancestor's death. 453.
- Ebb and flow of tides. 453.
- Ordinary computation of time. 453.
- Ordinary period of gestation. 454.
- Intoxicating properties of certain liquors. 454.
- Navigability of streams. 454.
- What obstruction in the highway will frighten horses of ordinary gentleness. 454.
- Magnetic variation. 454.
- Scientific principles generally known and long in use. 454.
- Processes used in the art of photography. 454.
- Inflammability of coal oil. 454.
- What is a work of necessity on Sunday. 454.
- Authority of railroad superintendent. 455.
- Meaning of current phrases and abbreviations. 455.
- What is a billiard table. 455.
- Nature of lotteries and usual methods of their management. 455.
- Character of circulating medium. 455.
- Changes in course of business. 455.
- Prices of ordinary labor. 455.
- Changes in meaning of words by lapse of time. 456.
- Annuity tables. 456.
- Disturbed condition of business during the war period. 456.
- Character of Free-Masonry. 456.
- Ordinary incidents of railway travel. 456.
- That tobacco and cigars are not drugs and medicines within the meaning of the Sunday law. 573.
- Judicial notice will not be taken of foreign laws. 207, 446.
- Nor of laws of one State by the courts of another. 207.
- Except were a State has been erected from an older one, or from territory formerly belonging to a foreign power. 208.

EVIDENCE—(continued.)

But, where a crime charged would be an offense at common law, it will be presumed, unless the contrary appear, to be against the law of another State. 209.

Nor of customs, local in their character. 322.

Private or special statutes. 322.

Municipal ordinances. 323.

Customs, rules or proceedings of inferior courts of limited jurisdiction. 449.

Record of a case not under consideration. 451.

Instances of the refusal of courts to take judicial notice of certain facts. 457-8-9-60-1-2-3-4-5.

MEDICAL EXPERTS.

Testimony of, held to be, at best, hearsay, and inadmissible in a criminal trial for murder by poison, when the witness has had no practical experience in the treatment of cases of that character, and can testify only from memory of what medical works and instructors teach on the subject. 480.

But the better rule would seem to be that actual experience is not necessary to render a physician competent as an expert on a particular question, but that lack of it should be considered by the jury in determining the weight to be given to his testimony. 499.

A physician cannot be excluded from testifying as an expert on the ground that he is not a specialist in the branch of medical practice under consideration. 498.

PAROL EVIDENCE.

Of circumstances surrounding the parties to a written contract at the time of its execution, where the language used leaves the subject matter in doubt, is admissible for the purpose of ascertaining the true meaning. 446.

PHYSICAL EXAMINATION.

Of one suing for personal injuries, may be compelled by the Court. 506.

PROOF OF DEED.

Certified copy for lands in Ga. is admissible in Ala. only with such proof as would be required by Courts of Ga. 60.

PUBLIC ACTS.

What are. 200, 202-3.

Determined by the extent to which they affect the people, rather than by the territory over which they operate. 201.

Instances of. 201-2-3.

RES GESTAE.

Declarations made by one injured, immediately after the injury is sustained, are admissible to show how the accident occurred. 148.

SECONDARY EVIDENCE.

May be given of a paper which is in court and is not produced upon demand, though no notice to produce has been given before the trial. 446.

EXEMPTION.**HOMESTEAD RIGHT.**

Will be allowed, as against the husband's debt, entirely out of his interest in premises owned jointly by husband and wife. 124.

INSURANCE.

Upon homestead is not exempt under a law exempting the homestead. 789.

FIRE INSURANCE. See BILLS OF LADING.**ADDITIONAL INSURANCE.**

Consent of agent must be given in the manner prescribed by the policy. 60.

Waiver is a question for the jury. 60.

FIRE INSURANCE—(continued.)

Payment of a second policy, taken out, without the assured's consent, by one wrongfully claiming title, and who was afterwards compelled to account to the assured for the proceeds, is no defense to an action on the original policy. 190, 243.

Where a policy, whose conditions provide that it shall be avoided by additional insurance, not consented to, is issued at the request of a mortgagee, but in the names of two joint mortgagors, one of whom afterwards, without the consent of the insurer, takes out another policy upon his individual interest in the property, no recovery can be had upon the original policy. 216.

But, where the first policy is in the name of the mortgagee, recovery may be had. 216.

Conditions as to other insurance are valid. 221.

Construction of such conditions. 221-2.

Who is the insured. 222-3-4.

What property is insured. 225.

When other insurance exists. 226-7-8-9-30.

Notice of simultaneous policies must be given. 231.

But notice of renewed or substituted policies need not be given. 231.

Where the contract is entire, a forfeiture extends to the whole claim. 232.

Distinction between notice of subsisting and of future insurance 232.

What is sufficient notice. 232-3-4.

What is sufficient consent. 234-5-6-7.

By what circumstances or acts an insurer is estopped from claiming a forfeiture. 237-8.

How the condition may be waived. 239-40-1-2-3.

Tendency of the courts is to liberalize, especially in applying the rules of waiver and estoppel against insurers. 243.

Avoids policy, although the second policy is voidable for the failure to disclose other insurance. 314.

AGENT.

Authorized to procure policies and forward applications, is the agent of the insurer in all that he does in preparing the application, notwithstanding a stipulation in the policy to the contrary. 382.

ARBITRATION.

Condition, making an award of arbitrators, fixing the amount of loss, a condition precedent, is void, as ousting the courts of their legitimate jurisdiction. 253.

ARBITRATION CLAUSE.

When vague, will not be enforced. 667.

ASSIGNMENT.

To purchaser, assented to by the insurer, creates a new contract, which is not affected by a prior default of the assignor. 789.

BY-LAW.

May be waived by an officer of a mutual insurance company. 314.

CERTIFICATE OF MAGISTRATE.

What is compliance with a condition, requiring the production of a certificate of the "nearest" magistrate. 506.

CHANGE OF POSSESSION.

Where a marriage contract gives a wife a life interest in a dwelling and land, in lieu of dower and homestead, her title, upon the death of her husband, is by purchase, not by succession, and a policy, which provides that it shall be void, "in case any change shall take place in title or possession, except by succession" by reason of the death of the assured, is avoided by the husband's death. 314.

CONTRACT TO INSURE.

Breach of, when made with an agent, will support an action for damages against an insurance company, although no premium was paid. 253.

FIRE INSURANCE—(continued.)**INCREASE OF RISK.**

Violation of a condition prohibiting alteration of use so as to increase the risk, renders the policy absolutely void, and does not merely suspend it. 573.

INCUMBRANCE.

Placed upon real estate, without notice, does not affect the insurance upon personal property covered by the same policy. 790.

INCUMBRANCES.

What constitutes waiver of a covenant against. 573.

INSURABLE INTEREST.

Wife cannot maintain action upon a policy taken out upon her separate property in the name of her husband. 253.

Under the Maine statutes a husband has no insurable interest in his wife's property, conveyed by him to her. 446.

Is had by one who has agreed to purchase property and has given promissory notes for the consideration money, upon the payment of which the property is to be conveyed, although such notes are overdue and unpaid. 730.

In mortgaged property, remains in the mortgagor after a decree of foreclosure and until the period for redemption has elapsed, but such interest is ended by a failure to redeem within the specified period. 730.

KEEPING BOOKS.

What is compliance with a condition requiring books to be kept and placed in a safe at night. 507.

LIMITATION.

Where limitation expires on Sunday, suit may be brought the following Monday. 124.

LIVE STOCK.

Killed by lightning, while pasturing, are not covered by a policy insuring a barn and its contents, but excepting loss occurring to property, while removed from such barn. 189.

PREMIUM NOTE.

Part payment of an overdue premium note will not revive a policy which has been rendered void by non-payment. 507.

PROOF OF LOSS.

Notary's certificate of amount of loss is not conclusive upon the assured. 189.

What does not constitute waiver of proof. 573.

PROOFS OF LOSS.

Condition requiring production of certificate of the magistrate or notary public nearest the place of the fire, means the nearest officer of the classes named, whether magistrate or notary. 790.

Waiver of, will not be inferred from mere silence on the part of the insurer, after receipt of notice. 730.

WAIVER. See ADDITIONAL INSURANCE, PROOF OF LOSS.

Of payment of premiums when due, may be constituted by habits of business on the part of the insurer. 253.

WARRANTY.

Breach of, in a policy covering two buildings, which only affects one of such buildings, will not prevent recovery for a loss upon the other. 790.

Of unconditional ownership, is broken by the existence of a mortgage or conditional sale, and a policy issued on the faith of such warranty is avoided by the breach. 507.

WIFE'S POLICY.

Does not inure to the benefit of her children, when her husband survives her, if it contains no provision to that effect. 730.

FIXTURES.

BAKER'S OVEN.

Is not a trade fixture. 790.

PUMP AND BOILER.

Placed by a railroad upon land erroneously supposed to be its own, and used for pumping water from a well on the same land, are not fixtures, and may be removed, upon discovery of the error. 667.

FRAUD.

FALSE REPRESENTATIONS.

As to the value of a bond offered for sale, will not sustain an action of deceit, where the purchaser could readily have ascertained its market price. 314.

GAMBLING CONTRACT. See AGENCY.

FUTURES.

Notes given for losses sustained in carrying "futures" in a cotton speculation, where the purchases were made on margin, are void, and no recovery can be had upon them. 667.

PERSONAL PROPERTY.

What constitutes a gambling contract for sale of. 315.

PROFITS.

Arising from speculative deal in wheat, paid over by one party to a broker, to be paid by him to another, may be recovered by the latter from the broker, though the original contract was not enforceable. 315.

GIFTS.

INTER VIVOS.

What constitutes a valid gift *inter vivos*. 790.

GUARDIAN AND WARD. See PRINCIPAL AND SURETY.

HOMESTEAD LAWS.

MORTGAGE.

Upon lands entered under U. S. homestead laws, may be made before final proof or certificate. 574.

HUSBAND AND WIFE. See FIRE INSURANCE, LIFE INSURANCE, MARRIAGE, MARRIED WOMEN, PHYSICIANS, SLANDER, STATUTE OF FRAUDS, TRUSTS.

ARTICLES OF SEPARATION.

Cannot be assailed, because the contracting parties were husband and wife, in an action between a surviving wife and her husband's executors. 466.

Nor will an executed agreement for a separation be interfered with on the ground of public policy, as this is best subserved by leaving the parties where they have placed themselves. 466.

Where a husband induces his wife to surrender an agreement of separation for a sum of money in hand, the wife cannot afterwards sue for the benefits of the surrendered agreement, without first returning the money received. 466.

Agreements for separation between husband and wife, made while they are living together and to take place presently, are valid. 471.

But not so, when made to take place in the future. 471.

Validity of such agreements is recognized in U. S. 471.

California statute. 471.

But in North Carolina the validity of such contracts is denied. 472-3.

Contracts for separate maintenance, executed with the aid of a trustee, are familiar to the common law and have long been protected and enforced in chancery. 473-4.

Actual and immediate separation is necessary. 474.

Where the separation already exists, the consideration of the husband's agreement is his release from liability for the support of his wife. 475.

HUSBAND AND WIFE—(continued.)

- Reunion of the parties is equivalent to rescission. 475.
- Subsequent divorce does not release the husband from his covenants. 476-7.
- Trustee for the wife is essential, unless there is some statutory exception. 477.
- Exceptions. 478-9.
- Iowa statute. 478.
- Wife may rescind by accepting other provisions. 479.
- Wife must sign deed or articles, and cannot act by attorney. 480.
- Otherwise in Vermont. 480.

COMMON LAW RULE.

- That civil existence of wife is merged in that of her husband still obtains, save where an exception has been legally established. 410.

CONTRACT TO SUPPORT HUSBAND.

- Made by wife, is void. 790.

GIFT.

- By wife to husband, makes the money given the property of the latter, and it does not constitute such a valuable consideration as will support a subsequent conveyance from the husband to the wife. 253.

LOTTERY PRIZE.

- Received from ticket purchased with the separate money of the wife, is community property under the Texas statute. 315.

MARRIAGE CONTRACT.

- Stipulating that furniture, etc., in use "for family purposes," shall, upon the death of either, vest in the survivor, does not include heirlooms. 190.

PENSION MONEY.

- Received by husband from U. S. may be given by him to his wife for the purchase of a home in her name, and the property so purchased will not be liable to the claims of the husband's creditors. 446.

POWER OF ATTORNEY.

- May be given by wife to husband to convey her inchoate interest in his estate. 507.

PRESUMPTION OF DEATH.

- Arising from absence of husband for seven years, may be rebutted, and a second marriage made upon the strength of such presumption, is void, if the husband was in fact alive. 446.

SERVICES.

- Claim against an administrator cannot be sustained by a woman who married and lived with decedent, supposing him to be unmarried, but afterwards learned that he had a wife living. 60.

STATUTES.

- Statutes have been adopted, and decisions rendered, affecting the right of a wife to bring suit directly against her husband, in the following States and Territories:

- Alabama. 754.
- Arkansas. 754.
- Arizona. 754.
- California. 754.
- Colorado. 755.
- Connecticut. 756.
- Dakota. 757.
- Delaware. 757.
- Florida. 757.
- Georgia. 757.
- Idaho. 758.
- Illinois. 758.
- Indiana. 759.
- Iowa. 760.

HUSBAND AND WIFE—(*continued.*)

Kansas. 761.
 Kentucky. 761.
 Louisiana. 761.
 Maine. 762-3.
 Maryland. 763.
 Massachusetts. 764.
 Michigan. 764-5.
 Minnesota. 766.
 Mississippi. 766.
 Missouri. 766.
 Montana. 767.
 Nebraska. 768.
 Nevada. 768.
 New Hampshire. 768-9.
 New Jersey. 770.
 New Mexico. 771.
 New York. 772.
 North Carolina. 774.
 Ohio. 775.
 Oregon. 775.
 Pennsylvania. 748, 776-7-8.
 Rhode Island. 779.
 South Carolina. 779.
 Texas. 779-80.
 Utah. 780.
 Vermont. 781.
 Virginia. 781.
 Washington. 782.
 West Virginia. 782.
 Wisconsin. 783.
 Wyoming. 784.

SUIT BY WIFE AGAINST HUSBAND.

In Pennsylvania, a wife may not sue her husband directly, and in her own name, for money received by him from her separate estate. 748. But she may do so in England, under the Married Women's Property Act. 753.

WIFE'S RIGHTS OF ACTION.

Conferred in Pennsylvania by the Married Person's Property Act of 1887, are those only which are necessarily incident to her rights of ownership of property and capacity to contract as if she were a *feme sole*. 748.

INFANTS.

CONTRIBUTORY NEGLIGENCE.

Of a child seven years of age, is a question for the jury. 547. The court will decide that a child of very tender years has not sufficient judgment to be guilty of contributory negligence, but it is impossible to prescribe a fixed period when a child attains to such judgment. 547.

ILLEGITIMATE CHILD.

Testamentary guardian for, cannot be appointed by its father. 790.

RIGHT TO PLAY IN STREET.

Is not settled. 550.

But it is nowhere disputed that children *sui juris*, or children *non sui juris*, in charge of a proper person, have the same right as adults on the sidewalk and streets. 550.

There is a distinction in this regard between children *sui juris* and those *non sui juris*, as to the application of the doctrines of imputable and contributory negligence. 550.

The correct proposition is, that all children, whether *sui juris* or *non*

INFANTS—(continued.)

sui juris, have the right to play on the sidewalk and street, and if injury to them can be avoided by the exercise of due care, such care must be used, and the want of such care is not excused by imputable or contributory negligence on their part. 550-1, 557.

Doctrine of *Hartfield v. Roper* (1839), 21 Wend. (N. Y.) 615, criticised. 551.

Hartfield v. Roper is sustained by the courts of nine States. 551-2. And repudiated by those of ten. 552.

Limitations of the doctrine of *Hartfield v. Roper*. 552-3.

INSOLVENCY.

DISCHARGE.

By State insolvent court, does not affect a creditor, who is a citizen of another State, and was not a party to the proceeding. 253.

INTERSTATE COMMERCE LAW.

CAR.

Carrier must furnish a car properly adapted to carry the quantity designated. 61.

DESTINATION.

Regulation intended in the first and second sections of the Act is from the origin to the destination of the cargo; "to" means the destination at any place within the State or foreign country, reached by a continuous carriage or shipment. 315.

JURISDICTION.

Of Federal Courts over actions for the violation of the Interstate Commerce Act is not dependent upon diverse citizenship. 124.

Of Commission extends to commerce between points in the same State, passing in transit through another State. 124.

PASS.

Proof of the issuing of an unused and expired pass does not establish discrimination in fares. 124.

RATES.

Reasonableness of, must be determined by the circumstances of the carrier, as well as the exigencies of the shipper's business. 61.

If just and reasonable from selected points through certain territory, are *prima facie* just and reasonable from all other points therein. 125.

TRAFFIC.

Interchange of, cannot be denied by one railroad to another, on the ground that the latter supplies no public necessity. 61.

JUDGMENT.

LUNATIC.

Validity of judgment against lunatic cannot be questioned in a collateral proceeding. 315.

TORT.

Assignment of right of action in tort cannot be made before judgment is actually entered. 61.

JURISDICTION. See CONSTITUTIONAL LAW, CRIMINAL JURISDICTION, CRIMINAL LAW, INTERSTATE COMMERCE LAW.

DIVERSE CITIZENSHIP.

Federal Courts may entertain, where parties are of diverse citizenship, a bill in equity to vacate, on the ground of fraud, an order of sale made by a State Probate Court. 125.

When the Federal Courts have once acquired jurisdiction by reason of diverse citizenship, such jurisdiction is not lost by a transfer of the cause or action, whereby the controversy becomes one between citizens of the same State. 507.

EMBEZZLEMENT BY OFFICER OF NATIONAL BANK.

Is within the exclusive jurisdiction of the Federal Courts. 507.

FEDERAL COURTS. See HABEAS CORPUS.

Have jurisdiction to inquire into the circumstances of a homicide

JURISDICTION—(*continued*.)

committed by an officer of the United States, in order to determine whether the act was committed in the line of duty, or was malicious, wanton, reckless, or without reasonable apparent necessity. 585.

Originally had jurisdiction to entertain a suit against a State by a citizen of another State. 625.

But this was taken away by the Eleventh Amendment to the Constitution. 625.

Have no criminal jurisdiction in common law cases. 628.

May be given jurisdiction by Congress in suits by a U. S. Bank. 633-4.

HABEAS CORPUS.

Upon a writ of *habeas corpus*, the Federal Courts have jurisdiction to discharge a petitioner, when found to be in custody for an act done, or omitted, in pursuance of a law of the United States, no matter from whom, or under what authority, the process may have issued under which he is held. 585.

By the Judiciary Act of 1789, since incorporated in the Revised Statutes, Federal Courts were given *habeas corpus* jurisdiction. 624.

Which has been sustained by judicial decisions. 633.

By the Force Bill of 1833, afterwards incorporated in the Revised Statutes, the *habeas corpus* jurisdiction was extended, and penalties prescribed for disobedience to such writs. 635.

This jurisdiction was further extended by the Act of 1842, also incorporated in the Revised Statutes. 635-6.

Decisions, since the Force Bill of 1833 and the Act of 1842, upon the *habeas corpus* jurisdiction of the Federal Courts, cited and discussed. 636-653.

PENALTY.

Action for penalty imposed by a State statute upon railroad companies guilty of extortion, cannot be removed to the Federal Courts. 315.

PERJURY.

Committed in a contest for a seat in the U. S. House of Representatives, is within the exclusive jurisdiction of the Federal Courts. 507.

STATE COURTS.

Forgery of note, to deceive the U. S. bank examiner, may be tried in a State Court. 61.

Penalty for usury received by a National Bank may be recovered in a State Court. 61.

May enjoin the removal of appurtenances to a wharf on navigable waters. 125.

Have exclusive jurisdiction over an action between citizens of the same State on a contract to pay royalties upon a patented invention. 125.

Have no jurisdiction to enjoin a citizen of one State from prosecuting a suit in the courts of another State, on the ground that the latter courts differ in their views of the law governing the case from the U. S. Supreme Court. 382.

STATE LEGISLATURE.

May authorize the building of a bridge, which obstructs a navigable river altogether within the State's own borders, provided Congress does not interfere. 125.

U. S. JUDGES.

An assault upon, or an assassination of, a Judge of a Federal Court, while traveling for the purpose of holding Court, is within the jurisdiction and power of the U. S. Marshal, or his deputies, to prevent, as peace officers of the Government of the United States. 586.

U. S. SUPREME COURT.

May compel a State Court to obey its mandate. 628.

Has jurisdiction over a case arising under the Constitution or laws of

JURISDICTION—(continued.)

the United States, notwithstanding the fact that a State may be a party thereto. 630-1-2.

LANDLORD AND TENANT.**ASSIGNMENT OF TERM.**

A transfer by a tenant, of demised premises, for the unexpired residue of his term, is an assignment, making the assignee liable to the original lessor for rent, though the instrument of transfer purports to be a lease, reserves a different rent from that specified in the original lease, with right of re-entry and forfeiture for nonpayment, and provides for surrender of the premises to the original lessee. 558.

And the refusal of the original lessor to release his lessee from liability for rent, does not estop him from treating the sub-lease as an assignment. 558.

Nor does the fact that the transfer was made without the consent of the original lessor, in violation of the provisions of the lease, affect his right to recover rent from the transferee. 558.

DEATH OF LESSEE.

Is not an alienation. 190.

DEFECTIVE BUILDING.

Risk is taken by tenant, when the defects are apparent and there is neither express warranty, fraud, nor misrepresentation. 125.

DISTINCTION BETWEEN ASSIGNMENT AND SUB-LEASE.

Is a fundamental one, based upon principles of the feudal law, and is wholly independent of the form of conveyance. 566.

Difference between alienation and sub-infeudation is the basis of the distinction between an assignment and a sub-letting. 567.

In determining the question whether a particular conveyance is an assignment or a sub-lease, the test is, whether the original lessee retains a reversion. 567.

Authorities considered. 567-8-9.

Differing qualities of an assignment and a sub-lease. 568-9.

FAILURE TO GIVE POSSESSION.

What damages may be recovered by the tenant. 791.

LEASEHOLD ESTATE.

For 99 years, is personality. 190.

WORKING THE QUARRY.

In lease, includes the removal of water which has flooded the quarry. 791.

LAND PATENTS. See LIMITATION.**PLACER CLAIM.**

Covers all mineral deposits found therein. 508.

STONE QUARRY.

May be patented as a placer claim. 508.

LIABILITY FOR CAUSING DEATH.**ACTION.**

To recover damages for causing death, is not maintainable at common law. 385.

Nor in admiralty. 385.

But only when authorized by statute. 385.

LIMITATION.

The statute of limitations does not begin to run until the appointment of an administrator. 578.

But, where death was not instantaneous, it has been held that the running of the statute began at the time of the injury. 579.

STATUTORY LIABILITY.

Under Lord Campbell's Act (English), the jury should not be allowed to take into consideration mental sufferings or bereavements, but must give compensation for pecuniary loss only. 385-6.

LIABILITY FOR CAUSING DEATH—(continued.)

Some actual damage must be shown; the recovery of nominal damages is not permissible. 386.

Damages may be recovered on account of a change in the mode of distribution of property among members of a family, although no pecuniary loss to the family in the aggregate could ensue. 386.

Settlement made by a decedent in his life-time, bars an action under the statute after his death. 387.

But recovery by a widow as administratrix for personal property of the decedent, damaged by the same cause which resulted in his death, does not bar the widow's right of action under the statute. 388.

Nor does the statute prevent recovery by an administrator for pecuniary loss or damage resulting to a decedent from personal injury. 389-90-1.

Under American statutes, the damages recovered are exclusive of any loss or damage to the injured party during his life and include only the loss caused by his death to the persons specified. 391-2-3-4.

Statutes of Massachusetts and Maine. 395.

In Kentucky, recovery cannot be had under the statutes when death is practically instantaneous, but otherwise, when an appreciable interval of suffering elapses between the infliction of the injury and the death. 513-4.

In New York and Texas an action is maintainable in case of instant death. 514.

So also under the statutes of Connecticut, Tennessee and Iowa. 514.

But not so in New Jersey. 516.

The statute gives a new cause of action, not a continuance of one existing at common law, and hence has no extra-territorial operation. 516-7.

But where the death is caused in one State and suit is brought in another, the suit is maintainable, if both States have statutes giving a right of action, and substantially alike. 518.

The Supreme Court of U. S. has, however, recognized the right to recover in one State, under the statutes of another State, within which the death was caused. 519.

Rule as to right of action for a death occurring at sea. 519.

Settlement made by the injured person in his lifetime bars a suit under the statute after his death. 520-1.

In Kentucky, a suit by an administrator to recover damages for the sufferings of the intestate prior to his death, is a bar to a subsequent action based upon the death itself. 522.

In Illinois, it is held that the statutory right of action is a continuance of the common law right belonging to the decedent, and, therefore, two recoveries cannot be had. 523.

So also in Kansas. 524.

Otherwise in U. S. Court for Kansas, and in Mississippi. 524-5.

Rule in Maine. 525.

" Massachusetts. 526-7:

" Pennsylvania. 527.

" Vermont. 526.

Recovery of father for loss of services of a minor son does not bar an action by the father, as administrator, to recover damages for the son's death. 527.

Summary of decisions. 528.

In Wisconsin the statutory action abates on the death of the beneficiary. 577.

So also in Missouri. 577.

But otherwise in Connecticut and New York. 577.

In New York and Indiana, an action begun in the life-time of the person injured may be continued after his death. 578.

The right of action given by the statute should be regarded as a new

LIABILITY FOR CAUSING DEATH—(continued.)

right of action, and not a revival or continuation of a common law right possessed by the deceased. 580-1.

New York Statute. 582.

Pennsylvania " 582.

Lord Campbell's Act. 584-5.

LIBEL. See COMMERCIAL AGENCIES, SLANDER.**COURT RECORDS.**

Pleadings filed in Court, which are pertinent and material, are privileged. 61.

Publication of pleadings or other proceedings in civil causes, before trial, is not privileged. 253.

RAILROAD COMPANY.

Poster, put up in the ticket office of a railroad company by the ticket agent, and left there for forty days, is a publication by the company. 316.

List of discharged employes, giving reasons for discharge, and placed in the hands of persons whose duty it is to employ servants for the company, is privileged. 574.

LIFE INSURANCE. See ACCIDENT INSURANCE.**ASSESSMENTS.**

Where there has been unreasonable delay in making an assessment to meet a loss, a beneficiary is entitled to recover the maximum amount named in the certificate. 126.

When notice of assessments is always sent by mail, although the charter provides only for posting, a failure to mail such a notice estops the insurer from claiming a forfeiture for non-payment. 253.

ASSIGNMENT.

Power to assign or surrender policies for the benefit of wife and children considered. 434-5, 437-8-9-40-1-2-3.

BY-LAW.

Which conflicts with the terms of the policy, will be construed to be waived. 62.

CONSTITUTIONAL EXEMPTION.

Of life insurance from the claims of the insured's creditors, is given in North Carolina. 433.

But the provision does not apply to assignments of policies. 433.

Decisions. 439.

CREDITOR'S POLICY.

What amount of proceeds may be retained by the creditor. 316.

DIVISION OF FUND.

Conflicting rules as to the division of proceeds of life insurance, where creditors are permitted to come in. 443.

DRUNKENNESS.

Payment of loss cannot be refused on the ground of intemperate habits of the insured, when the latter was known to the agent insuring him to be a confirmed drunkard. 62.

ENDOWMENT POLICY.

Cannot be lawfully issued by a mutual benefit company incorporated to give aid "to the widows, orphans, and heirs or devisees of deceased members." 791.

INSOLVENT DEBTOR. See STATUTE.

May insure his life for the benefit of his wife and children, without rendering the proceeds liable to the claims of creditors. 417, 435-6, 442.

Nor is the payment of premiums for such insurance equivalent to a transfer of property with intent to hinder, delay and defraud creditors, such as would be void under the Statute of Elizabeth. 417.

Unless there is evidence of a fraudulent intent, participated in by the beneficiary and insurer. 417.

LIFE INSURANCE—(*continued.*)

But it has been held otherwise, in the absence of statutory provision.

432-3.

And assignments of policies originally issued in the debtor's own favor, have also been declared fraudulent. 432-3.

A distinction is made between assignments of policies and policies issued directly to the beneficiary. 432.

But the tendency is in the direction of the exemption of such policies from liability for the insured's debts. 442.

PAID-UP POLICY.

Issued in pursuance of an agreement in a prior policy, without new consideration, is not a new contract, and is not affected by a change in the constitution of the company, made after the date of the first policy. 254.

STATUTES.

Exempting the proceeds of life insurance from the claims of creditors, have been adopted in—

Great Britain. 432.

Alabama, and decisions. 433.

Arkansas. 433.

California, and decisions. 433.

Connecticut. " " 419, 434.

Delaware. 434.

Florida, and decisions. 434.

Georgia, " " 434.

Illinois, " " 435.

Indiana, " " 435.

Iowa. 436.

Kansas. 436.

Kentucky, and decisions. 436.

Maine, " " 436.

Maryland, " " 437.

Massachusetts, " " 437.

Michigan. 437.

Minnesota, and decisions. 437.

Mississippi. 438.

Missouri, and decisions. 438.

New Hampshire, and decisions. 438.

New Jersey, " " 439.

New York, " " 439.

Ohio, " " 440.

Pennsylvania, " " 440.

Rhode Island, " " 441.

Tennessee, " " 441.

Vermont. 442.

Virginia, and decisions. 442.

Wisconsin, " " 442.

There is no statutory provision in—

Colorado. 434.

Louisiana (decisions). 436.

Nebraska. 438.

Nevada. 438.

Oregon. 440.

South Carolina. 441.

Texas (decisions). 441.

West Virginia. 442.

WAIVER. See BY-LAW.

Knowledge by assistant superintendent that a policy-holder is engaged in the liquor business, is a waiver of a forfeiture for carrying on such business. 190.

LIFE INSURANCE—(*continued.*)

Refusal to furnish blanks for proof of death, on the ground that the policy was forfeited, is a waiver of such proof. 190.

WIFE'S POLICY. See **INSOLVENT DEBTOR.**

Policy payable to wife and children, exchanged after the wife's death, for a prior policy payable the same way, is not liable for the debts of the insured. 383.

Payable to "heirs, administrators or assigns," upon the insured surviving his wife, inures to the benefit of his heirs, and not hers. 791.

LIMITATION. See **ADMIRALTY, ATTORNEY-AT-LAW, BILLS OF LADING, FIRE INSURANCE, TELEGRAPHS.****ACKNOWLEDGMENT.**

Letter, alluding to "those old notes," and promising "every cent that is due on them," does not remove the bar of the statute. 62.

Indorsement on note, acknowledging "indebtedness of this note," removes the bar of the statute. 62.

BAILEE.

Statute runs against, from the denial of the bailment and conversion of the property. 62.

FEDERAL COURTS.

Will enforce State statutes of limitation, in the absence of Congressional legislation. 667.

JOINT NOTE.

Payments by one joint maker will arrest the running of the statute as to all. 191.

LAND.

Inclosure is not necessary to constitute adverse possession. 126.

LAND PATENT.

Government suit to revoke for fraud and misrepresentation, may be barred by the statute or laches. 62.

MONEYS RECEIVED FOR INVESTMENT.

Are subject to the bar of the statute. 508.

RES ADJUDICATA.

When introduced in a pending action by supplemental bill, is not a new cause of action, and the statute does not apply. 126.

STOCK SUBSCRIPTIONS.

Are not subject to the running of the statute, until called for, and after an assignment for the benefit of creditors, until the court makes a call. 383.

WAR PERIOD.

In Alabama, is to be deducted from a calculation of the statutory bar, but not from the time necessary to raise a presumption of payment. 191.

LIQUOR LAWS. See **CONSTITUTIONAL LAW.****CIDER.**

Whether cider is a vinous or spirituous liquor, within the prohibition of a license law, is a question of fact, to be determined by a jury, and not by the court. 254.

Prohibition of sale of, without any qualifying adjective, applies to all cider, without regard to its intoxicating quality. 731.

CHIPS.

Sale of, to be exchanged for liquor, is equivalent to a sale of the liquor itself. 508.

CHURCH.

Prohibition of sale within three miles of a church does not apply to a contract for the sale and delivery of liquor, which is actually outside that limit. 126.

CORPORATION.

Where a corporation sells intoxicating liquor illegally, its officers and servants may be convicted and punished for the violation of law. 508.

LIQUOR LAWS—(*continued.*)

DRUGGIST.

Sale of intoxicating liquors by, when forbidden by statute, is not excused by the fact that they were sold in good faith as a medicine, without knowledge of their intoxicating qualities. 731.

GIFT OF LIQUOR.

Damages cannot be recovered for injuries occasioned by intoxication, under a statute giving a right of action against "any person who shall, by selling or giving intoxicating liquors, have caused the intoxication," from one who gives liquor to a friend, as a mere act of courtesy, without any purpose of pecuniary gain. 316.

ILLEGAL SALE.

Conviction may be had both for selling without a license and for selling to a minor, although both indictments are based upon the same sale. 254.

LOCAL OPTION LAW.

Validity of election adopting, cannot be questioned in a prosecution for its violation. 191.

MINOR.

Selling to, on order of and for delivery to his father, is not a violation of a statute prohibiting the sale or gift of intoxicants to minors. 508.

SALE "C. O. D."

Of liquor, consigned by a common carrier, is consummated at the time and place of shipment. 791.

SELLING FROM WAGON ON HIGHWAY.

Does not violate a statute prohibiting the unlicensed sale of liquor, to be drank in the seller's "house, out-house, yard, garden, or the appurtenances." 191.

SERVANT.

Who, in the absence of the proprietor, makes sales and assumes control of a saloon, may be convicted of keeping such saloon. 191.

TAXATION.

Under Michigan statute, a foreign manufacturer, who sells at wholesale within that State, is taxable as a wholesale dealer. 574.

MARINE INSURANCE.

ABANDONMENT.

When accepted. 254.

INSURABLE INTEREST.

Part owner of a vessel has an insurable interest for advances and disbursements made by him upon a venture engaged in with such vessel by himself and the other owners. 254.

RESCUE.

General average expenses for rescuing a vessel from a peril brought about by negligence in her navigation, cannot be recovered under a policy, which excepts losses from negligent navigation. 316.

SUBROGATION.

Inures to insurance company, when the goods insured have been lost at sea through the negligence of a carrier, and the insurance has been paid to the shipper. 447.

SUNKEN CARGO.

Abandoned to underwriters, may be sold by them to a third person. 574.

UNSEAWORTHINESS.

Will be presumed when a canal boat, which is old and subject to heavy strains, suddenly springs a leak and sinks in fair weather and smooth water. 574.

MARRIAGE.

INDIANS.

Solemnization according to the customs of an Indian tribe need not take place within the territory of such tribe, to constitute a valid marriage. 316.

MARRIAGE—(continued.)

RE-MARRIAGE AFTER DIVORCE.

Prohibition of, renders such marriage void in the State of the domicile, even when contracted in another State where no such prohibition exists. 254.

MARRIED WOMEN. See HUSBAND AND WIFE.

ACQUESCENCE.

By a married woman in a deed made during her minority, will not, so long as she is covert, amount to ratification, but, to annul such deed, she must pay the grantee for necessities supplied her while a minor, and which constituted part of its consideration. 508.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

In Wisconsin, cannot be made to a married woman. 790.

BLANK DEED.

A married woman is estopped from disputing the validity of a deed, regularly executed and acknowledged, and subsequently delivered by her husband to an innocent purchaser, notwithstanding the facts that at the time of its execution and acknowledgment, there was a blank in the deed for the name of the grantee, and that the wife was misled as to what property the deed conveyed. 654.

But it is questionable whether the doctrine of estoppel is thus properly applied. 657.

The proper question to be considered is whether a married woman has the capacity, under the enabling statutes, to execute and acknowledge a deed in blank. 658.

The U. S. Supreme Court holds that she has no such capacity. 658.

And it has been so held in Iowa and Massachusetts. 659.

Decisions cited and discussed. 660-4.

CONDUCT IN PAIS.

May operate as an estoppel, notwithstanding coverture and the absence of fraud. 126.

JUS DISPONENDI.

At common law, in equity and under the statute, the rule is that a married woman has no power to dispose of her estate, except by compliance with the requirements of the instrument creating the power. 659.

Where a statutory power is conferred, she has no capacity but that expressly given in the statute, whose requirements must be strictly complied with. 662.

MASTER AND SERVANT. See LIQUOR LAWS, NEGLIGENCE, RAILROADS, SUNDAY LAWS.

DEFECTIVE APPLIANCES.

Railroad company is responsible for an injury to an employe, resulting from defective car brakes. 62.

But not for an injury to an engineer, by reason of the defective track of another company, upon which he was temporarily running his employer's engine. 64.

DISCHARGE.

What conduct of the servant will warrant his discharge before the expiration of the term of his employment. 508.

Of employe, without sufficient excuse, before the expiration of the term of his employment, entitles him *prima facie* to the stipulated compensation for the entire term, and the burden is upon the employer to show what he could have earned elsewhere. 731.

FELLOW-SERVANT.

What is. 191.

Foreman of bridge gang upon a railroad is a fellow-servant with employes operating a train on the road. 316.

Overseer of slashing-room in a cotton mill is a fellow-servant with the second foreman of the machine-shop department. 317.

MASTER AND SERVANT—(continued.)

RAILROAD COMPANY.

Is not liable for an injury to an employe by reason of a danger which might have been observed and avoided. 64.

But is liable for an injury to a brakeman, sustained at night from an overhead bridge, whose proximity he could not know. 64.

VICE-PRINCIPAL.

What constitutes. 791.

Negligence of, is not negligence of fellow employe, and the employer is liable therefor. 127.

MECHANICS' LIENS.

RAILROAD COMPANY.

Cannot claim exemption from liens for erecting its bridges, on grounds of public policy. 447.

MINES AND MINING. See LANDLORD AND TENANT.

MINING GROUND.

As used in a statute, includes a ditch and water-right, by means of which a mine is operated. 791.

MORTGAGE. See HOMESTEAD LAWS.

AGREEMENT TO RECONVEY.

When such agreement does not constitute a mortgage. 126.

PROCEEDS OF SALE.

In foreclosure proceedings, under a mortgage given to secure two notes of the mortgagor, with different sureties, should be applied to the payment of both notes *pro rata*. 383.

MUNICIPAL CORPORATIONS.

BURNT BUILDINGS.

Falling of walls of, does not render a municipality liable for the damages sustained. 317.

GARNISHMENT.

City cannot be garnisheed and made liable to pay a creditor of its creditor, without express statutory provision. 281.

Exemption is based entirely upon grounds of public policy. 281, 290. Statutes of Kansas, relating to garnishment and cities of the second class, do not authorize the attachment of moneys owing by such cities. 281.

NEGLECTENCE. See CANALS, RAILROADS, INFANTS, MASTER AND SERVANT, SUNDAY LAWS, TELEGRAPHS.

AGRICULTURAL SOCIETY.

Is liable to one injured by reason of negligently constructed seats on its fairground. 63.

BARB-WIRE FENCE.

If negligently constructed, will render the owner liable for injuries occasioned thereby to the domestic animals of others, although it is entirely on his own land. 667.

BLIND PERSON.

It is not negligence *per se* for a blind person to walk unattended in the street, and such person is bound to use ordinary care only. 317.

CONCURRENT NEGLIGENCE.

Of carrier and third person, by which a passenger of the former is injured, does not relieve the latter from liability. 509.

CONTRIBUTORY.

Boy of ten and a-half years may be chargeable with. 63.

Is a question for jury, where one is injured after dark by a defect in street. 63.

Ordinary care only is required of one injured by a machine operated by another. 63.

Of driver, will not be imputed to one who rides by invitation in a vehicle, exercising no control over its movements. 127.

NEGLIGENCE—(continued.)

Of parents, cannot be imputed to a child of tender years, even in an action where the parents are indirect beneficiaries. 792.

Is chargeable to one falling into a hole in the sidewalk, which could have been plainly seen. 191.

ELEVATOR.

Absence of railing and trap-door, required by statute, is *prima facie* evidence of negligence on the part of the owner. 574.

Furnished by a storekeeper for the convenience of his customers, must be of good material and safe. 792.

EVIDENCE.

In an action to recover for injuries sustained through reckless driving, proof is admissible of the amount of travel on the street where the accident occurred. 189.

OBSTRUCTION TO TRAVEL.

When placed in street by order of the judge of a State Court, does not render the municipality liable for damages occasioned thereby. 191.

PRIVATE BRIDGE.

Need not be kept in repair by the owner, although used by the public without his invitation or any benefit accruing to him. 792.

PUBLIC NUISANCE.

Permitted by a municipality, renders it liable for damages sustained by reason thereof. 792.

REGISTERED LETTER.

Delivered by a letter-carrier to a hotel clerk, and lost through the negligence of the latter, renders him liable to the carrier for money contained in the letter, which the carrier has been compelled to refund. 792.

REMAINDERMEN.

Are not liable for defects in a wharf property, existing before it comes into their possession, subject to an outstanding lease, unless expressly notified thereof. 792.

NEGOTIABLE INSTRUMENTS. See BILLS AND NOTES, BILLS OF LADING, CHECKS.

BOTTOMRY BILLS.

Are not negotiable in U. S. 317.

COLLATERAL NOTE.

Is not negotiable. 254.

REGISTERED VIRGINIA COUPON CONSOLS.

Are not negotiable, without indorsement. 731.

RENEWABLE NOTE.

Promissory note, renewable at the option of the payee or holder, is not negotiable. 792.

STOCK CERTIFICATE.

Is not negotiable, any usage among stockbrokers to the contrary notwithstanding. 255.

WARRANT.

Order for payment of school funds is not negotiable. 254.

NOTARY PUBLIC.

SURETY.

Under what circumstances the surety on the official bond of a notary public will be liable for a false certificate of acknowledgment. 447.

NUISANCE.

CEMETERY.

Location near residences will be enjoined. 127.

CULTIVATION OF LAND.

Usual and reasonable cultivation of land will not constitute a nuisance, although the soil is drained into a mill-pond by reason of such use. 575.

NUISANCE—(*continued.*)

PUBLIC.

Public nuisance will not be enjoined at the suit of an individual, unless the latter suffer some private, direct and material damage. 317.

PARENT AND CHILD.

TORTS.

Father is responsible in damages for the torts of his children, committed with his countenance and encouragement. 317.

PARTNERSHIP.

GOOD-WILL.

Of the insurance agency business of a dissolved firm does not belong to either partner exclusively. 509.

SEALED INSTRUMENT.

Executed in the firm name by one partner only, does not bind the firm. 383.

SPECIAL PARTNERSHIP.

Is not changed into a general partnership by a failure to comply with the statutory requirements, which renders the special partner liable to creditors as a general partner. 668.

PATENTS.

CITIZENSHIP.

False oath that the applicant is a citizen of U. S., made innocently and without fraudulent intent, will not affect the validity of a patent. 318.

FRAUD.

Bill to cancel patent obtained through fraud may be maintained by U. S.. 127.

GAMBLING DEVICE.

Cannot be patented. 793.

INFRINGEMENT.

Of invention, before patent is issued, will not be enjoined. 318.

LAPSED ENGLISH PATENT.

Will prevent the issuance of an American patent for the same invention. 793.

PROMISSORY NOTE.

Given in U. S. for an English patent, is subject to the English rule that a promise to pay for a void patent is not without consideration. 318.

PHYSICIANS. See PRIVILEGED COMMUNICATIONS.

OPERATION.

Surgical operation upon a married woman may be performed without her husband's consent. 255.

PLEADING.

DAMAGES.

In an action by an administrator for causing the death of decedent, brought on behalf of the widow and children, a general averment of damages is sufficient. 148.

PRACTICE.

IMPERFECT PLEADINGS.

Are cured by verdict. 668.

SPECIAL VERDICT.

If silent concerning any of the issues in the case, it will be presumed that the party having the burden of proof, failed to prove them. 148.

VENIRE DE NOVO.

Will not be granted, where a special verdict does not contain an affirmative or express finding upon some of the issues. 148.

VERDICT.

Affidavits of jurors will not be received to impeach their verdict. 576.

PRINCIPAL AND SURETY.**GUARDIAN.**

Release by ward and discharge by court, both fraudulently obtained by guardian, do not operate to relieve his surety from liability. 127.

PUBLIC OFFICERS.

Sureties for clerk of court are not relieved from liability by the failure of the board of supervisors to audit the clerk's accounts, as required by law. 127.

PRIVILEGE.**SERVICE OF PROCESS.**

Cannot be made upon a party to an injunction suit, while attending the hearing. 63.

Nor upon a non-resident who has come from another State for the sole purpose of attending and testifying in a case to which he is a party. 318.

PRIVILEGED COMMUNICATIONS.**ATTORNEYS-AT-LAW.**

Communications by a client to his attorney, counsellor or solicitor, for the purpose of obtaining professional advice or assistance, are protected from disclosure. 1.

Privilege extends to clerks and assistants of attorney; also to necessary interpreter. 4.

Exceptions to rule. 4, 5, 6.

Rule covers all methods of communication. 6.

Waiver of privilege may be made by client. 7.

Confidential communications made in order to obtain advice to aid in the commission of crime, are not protected. 8.

CLERGYMEN.

Confessions to clergymen are not privileged at common law. 15.

Many States have protected such confessions by statute. 15.

Privilege depends upon the confession having been made to the clergyman in his professional capacity. 15.

PHYSICIANS.

Communications by a patient to his physician are not privileged at common law. 9.

Many States have protected such communications by statute. 9.

Privilege extends to all information acquired by the physician in his professional capacity, whether from the patient, from others, or from his own observation. 9.

Information not necessary to enable physician to act professionally, is not protected. 11.

Nor information obtained from one who seeks advice to aid in the commission of crime. 11, 12, 14.

Waiver of privilege may be made by patient. 12.

But not by his representatives, after his death. 13.

Privilege extends to the physician's assistants. 14.

STATUTES.

Arizona. 16.

Arkansas. 16, 17.

California. 17.

Colorado. 17.

Dakota. 17.

Georgia. 17.

Idaho. 18.

Indiana. 18.

Iowa. 18.

Kansas. 18.

Michigan. 18, 19.

Minnesota. 19.

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PRIVILEGED COMMUNICATIONS—(*continued.*)

Montana. 19.
 Nebraska. 19.
 Nevada. 19, 20.
 New York. 20.
 Ohio. 20.
 Oregon. 20.
 Pennsylvania. 20.
 Tennessee. 21.
 Texas. 21.
 Utah. 21.
 Washington. 21.
 Wisconsin. 21.
 Wyoming. 21.

PROCESS. See PRIVILEGE.

SERVICE ON HOLIDAY.

Is not invalid in New Jersey. 447.

PUBLIC LANDS.

FENCE.

May be erected by an owner of lands, if wholly within the limits of his own property, even if it happens to actually inclose certain public lands. 793.

LIMITATION.

Begins to run against a grantee of the United States from the date of final proof and payment. 793.

SHORE LANDS.

Belonging to the United States; become, upon the admission of a Territory into the Union as a State, the property of such State. 793.

PUBLIC OFFICERS.

CLERK OF COURT.

Is liable for failure to record pleadings and judgments, as required by law. 192.

COUNTY TREASURER.

Cannot contract to collect delinquent taxes for a stipulated per cent. of the interest and penalties. 793.

Is not accountable for funds received by his predecessor and not transferred to him. 63.

CUSTODIAN OF PUBLIC MONEY.

Who has given bond for its safe keeping, is not discharged from liability by the failure of the bank where he has deposited such money. 731.

FISH INSPECTOR.

Has judicial duties, and is not liable for the manner of their performance. 64.

KEEPER OF JAIL.

Who receives United States prisoners, and is paid for their maintenance, is an officer of the court, and punishable as such. 793.

POWER TO REMOVE.

Does not include power to suspend. 575.

SALARIES.

Are not subject to attachment for debt. 285.

U. S. DEPUTY SURVEYORS.

Statutory affidavit of, cannot be made before either a notary public or Commissioner of the U. S. Circuit Court. 668.

U. S. MARSHALS.

Are, within the scope of their authority, national peace officers, with all the statutory and common law powers appertaining to peace officers. 585.

RAILROADS. See CONSTITUTIONAL LAW, DAMAGES, EMINENT DOMAIN, EVIDENCE, FIXTURES, LIBEL, MASTER AND SERVANT, MECHANICS, LIENS, NEGLIGENCE, RECEIVERS, SUNDAY LAWS, TAXATION, TELEPHONES.

BRAKEMAN.

May recover from railroad company for injuries caused by reason of a bull on the track. 509.

Or a defect in a car-coupling which is not obvious. 148.

BRIDGE.

Built by railroad company at the crossing of a public street, must be constructed and maintained in such a manner as to render it safe for public travel. 731.

CONTRIBUTORY NEGLIGENCE.

Under what circumstances contributory negligence will not be inferred. 318.

Failure to stop, look and listen, will prevent recovery for an injury sustained at a crossing, even though the gates were not lowered, no warning given, nor lights shown. 447.

Recovery cannot be had for death of person walking on track, however negligent the railroad company may have been. 509.

What is such negligence on the part of one injured at a railroad crossing, as will relieve the railroad company from liability. 575.

CROSSING.

Warning must be given of the approach of a train to a crossing, although the railroad passes over the highway upon a trestle. 509.

DAMAGES.

Rules governing measure of damages for wrongful expulsion. 98, 99.

Fright and mental suffering are proper elements of damage in an action for the unlawful ejection of a woman from a passenger train. 252.

Under what circumstances punitive damages may be recovered by a passenger from a railroad company. 255.

DEPOT GROUNDS.

Are under the same complete and exclusive dominion of a railroad corporation as that exercised by every individual over his own property, and it may exclude and admit whom it pleases, coming to transact private business. 383.

EMINENT DOMAIN.

Public use, such as will authorize the taking of land by a railroad company, does not exist, where the purpose is to build a switch or branch road to reach a private manufactory. 255.

FARES.

Reasonable additional charge may be made when fare is paid on train. 98.

But only when there is an office at the station, where passenger could have bought a ticket. 95.

Payment may be made at any time before conductor has stopped the train and begun to eject the passenger. 96.

FIRE.

To avoid liability for burning hay by sparks from a locomotive, the jury must find that the employes were competent and skillful, and the locomotive properly equipped and operated. 64.

Under what circumstances recovery for damages alleged to have been caused by fire started by a locomotive, cannot be had. 383.

What evidence is sufficient to warrant the inference that a fire which damages crops, originated from a passing locomotive. 447.

INSPECTOR OF FREIGHT CARS.

Is a fellow servant of the other employes, and the railroad company is not liable to such employes for injuries caused by negligent inspection of loaded cars. 575.

RAILROADS—(*continued.*)

IRREGULAR TICKETS.

Where conditions under which a ticket has been issued are violated, the railroad may refuse to accept it. 92.

But passenger is entitled to notice of such conditions. 92.

LABORERS.

Engaged in laying a new track, are entitled to proper signals of the approach of trains on the adjoining track. 793.

LIMITED TICKETS.

Not good after expiration of limit, and passenger may be ejected if he refuse to pay his fare. 90.

Sufficient if journey be begun before midnight of the day of expiration, even if not completed on that day. 90.

But journey must be continuous. 91.

If limitation does not appear on face of ticket, and passenger has no other notice, it may be used. 91.

Words, "Good for this trip only," relate to journey, not to time. 91.

Expired ticket, when unused and not obtained by fraud, belongs to passenger. 91.

LOSS OF TICKET.

Falls on passenger. 88.

Berth in sleeping car is not within this rule. 89.

No decision upon question where conductor has seen and punched ticket before its loss. 90.

Reasonable time must be given to find ticket. 97.

PASSENGER.

In England cannot be removed from train for refusal to produce ticket or pay fare, where the by-law of the railway company which requires this to be done, makes no provision for its enforcement by expulsion. 81.

Right to remove for non-compliance with such by-law cannot be implied as part of the contract of carriage. 81.

But in United States, failure to produce ticket, or pay fare, justifies ejection. 90.

And where rules require ticket to be purchased before entering train, payment on train need not be accepted. 90.

But not so where ticket office is shut, and there is no negligence by passenger. 90.

Negligence by passenger will prevent recovery. 95.

One not a trespasser can only be put off at regular station. 97.

But a trespasser may be put off anywhere, provided it does not expose him to serious danger. 97.

Passenger may be forcibly expelled, provided no unnecessary force is used. 98.

But may not forcibly resist expulsion, even when entitled to ride. 98.

Even trespassers must not be exposed to serious risks. 98.

Intoxication does not excuse want of ordinary care and prudence by a passenger. 128.

Disorderly passenger, or one using profane, obscene or vulgar language, may be forcibly ejected from train. 192.

Sick passenger may be removed from a car, but not without due care and provision for his safety. 255.

Intoxicated passenger, who uses violent and indecent language, pulls the bell-rope and threatens the conductor with a knife, may be ejected from the train at night and at a place distant from any station. 318.

PENALTY.

In England fraudulent intent is necessary to sustain recovery for the penalty imposed by statute without payment of fare. 87.

RAILROADS—(continued.)

But failure to produce ticket is *prima facie* evidence of fraud. 87.
Use of non-transferable ticket by one not the purchaser is fraudulent. 87.

In United States and Canada such penalties are rarely enforced. 88.

PURCHASE OF TICKETS.

From one not an agent of railway company for sale of tickets is at risk of purchaser. 93.

Fraud by purchaser, or failure of consideration, justifies refusal. 93.

SEATS.

Railroad is bound to provide seats for passengers, but they need not be perfectly satisfactory. 95.

STOP-OVER PRIVILEGE.

In absence of, stopping over is an abandonment of the right to demand passage for the rest of the distance. 91.

Who may grant privilege. 91.

In Maine given by statute. 91.

SUNDAY TRAINS.

When a railroad permits persons to ride upon a freight train running specially on Sunday, though exacting no fare, it assumes the same duties to them as to regular passengers. 318.

TELEGRAPH OPERATOR.

Is not a fellow-servant with a brakeman. 793.

TICKET.

Of firm, entitling either partner to ride, but only one on any train, must be presented upon every trip. 384.

TICKET AGENTS.

Acts and statements of, do not affect controversies between conductor and passengers. 93.

Exceptions to rule. 93, 94.

How far such acts and statements are admissible against company. 94.

RECEIVERS.

DISTRIBUTION.

Claim of consignee for the value of goods lost by fire while in possession of a railroad company, and before the receivership, is not entitled to priority over the claims of bondholders. 509.

RELEASE.

JOINT TORT-FEASORS.

Settlement and release of claim against one or two joint tort-feasors will bar an action against the other. 509.

REMOVAL OF CAUSES.

ALIEN.

Suit by, cannot be removed on the ground of local prejudice. 794.

CORPORATION.

An action against a corporation created under the laws of another State may be removed to the Federal Courts, although such corporation has an office and agents, and does business, in the State where suit is brought. 510.

DIVERSE CITIZENSHIP.

Must be sufficiently shown on the record, or the cause will be remanded, even after appeal. 794.

LOCAL PREJUDICE.

Is not sufficient ground for removal, when such prejudice is confined to a single county, and the State laws allow a cause to be removed to another county of the same State. 510.

Is sufficient ground for removal, without regard to the amount in controversy. 575.

PENALTY.

Action for, by State official, cannot be removed. 510.

REMOVAL OF CAUSES—(*continued.*)

RESIDENT DEFENDANT.

May remove cause, in which he has been sued by a citizen of another State. 575.

STATE COURT.

Has no power, when the petition and bond are in proper form, to determine an issue of fact raised upon the petition. 510.

REPLEVIN.

ATTACHMENT.

Goods attached by an officer of the law, under legal process, cannot be replevied. 510.

REVENUE LAWS.

ARRIVAL OF VESSEL.

Vessel driven ashore by stress of weather has not "arrived" within the limits of a collection district, within the statutory meaning. 794.

FORFEITURE.

Action for, is abated by the death of the defendant. 511.

INVOLUNTARY PAYMENTS.

Of duties, what constitutes. 794.

REWARD.

ACCEPTANCE.

Performance of conditions of proposal, publicly made to unascertained persons, constitutes an acceptance. 112.

But not where the party performing had no knowledge of the proposal. 116.

OFFER.

When acted on, is binding upon private citizen making it. 112.

But only when the acts done have been with a view to the acceptance and performance of the contract tendered by the offer. 116, 117.

PUBLIC OFFICER.

Is entitled to claim reward for performance of an act which is not part of his official duty. 112.

SALE. See CHATTEL MORTGAGE, LIQUOR LAWS.

DELIVERY.

What is such delivery of grain to an elevator owner as will constitute a sale. 128.

Is a question for the jury. 448.

INSPECTION.

Right of, under a contract to deliver goods on board a steamer at Liverpool, to be shipped to New York, continues until their arrival at the latter place. 794.

NOTICE OF REJECTION.

Of goods purchased under an executory contract, when not unreasonable. 794.

PART PAYMENT.

Confers no title, when the goods are not to be delivered, until payment of the total cash consideration. 448.

PURCHASE OF GOODS TO BE MANUFACTURED.

Cannot be rescinded by the purchaser after receiving a portion of the order. 794.

REASONABLE TIME.

In which to return unsound horse is a question for the jury. 128.

TITLE.

Of goods purchased on credit, and marked, but still to be weighed and shipped, vests immediately in the purchaser. 795.

VENDOR'S LIEN.

When the possession of personal property is given to the buyer, and no reservation of title is made, there is no valid vendor's lien. 291.
General rule is that a vendor of chattels has, until delivery, a lien upon them for the price. 293.

SALE—(continued.)

But this principle does not apply to conditional sales. 293.

Taking a promissory note for the price does not affect the vendor's lien, so long as he remains the holder of the note. 293.

Where goods are to be paid for on delivery and the vendee refuses to pay upon completion of the delivery, the vendor's lien remains and he may resume possession. 294.

Until delivery, the right of *stoppage in transitu* remains. 294.

What constitutes delivery. 294-5-6.

SHIPPING. See ADMIRALTY.**ROW-BOAT.**

Is not a "vessel," and a steamer is not bound to change her course for one. 319.

SLANDER. See LIBEL.**EAVESDROPPER.**

The fact that a conversation between husband and wife is overheard by a third person who is secretly listening, without their knowledge, will not render the words spoken slanderous. 410-5.

OBLIGATION TO REPEAT.

What is such a statement as does not place those hearing it under a moral obligation to repeat it. 795.

PRIVILEGE.

Words spoken by husband to wife, accusing a female friend of the latter of perjury and want of chastity, are not privileged, where the husband and wife are on bad terms, and the woman spoken of had been a witness against the husband in divorce proceedings. 271.

What communications are privileged. 280.

Words addressed by husband to wife in private, are privileged. 410-3-4-5.

PUBLICATION.

Communication by husband to wife is a publication. 125, 190, 271, 276.

Defamatory words are not actionable until published. 276.

To constitute publication, it is sufficient if the slander be made known to a single third person. 277.

Must be made by defendant. 277.

It is a publication to deliver a writing to a person who must necessarily read it. 277.

What is sufficient evidence of publication. 278.

Publication, brought about by the plaintiff's own act, gives no right of action. 279.

Moral and intellectual character of the person in whose hearing the slander is uttered, is irrelevant. 280.

STOCKHOLDER.

Statements made by, at a stockholders' meeting, charging drunkenness and incapacity to an officer of the corporation, are privileged. 795.

WORDS ACTIONABLE PER SE.

Words spoken of butcher, charging him with selling the meat of diseased cattle, are actionable *per se*. 511.

Also the word "prostitute," when spoken of a married woman. 511.

WORDS CHARGING DRUNKENNESS.

Are not actionable *per se*. 731.

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- Communications to attorneys, clergymen and physicians. 19.
- Life insurance, payable to wife. 438.
- Married woman's rights of action. 766.
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Life insurance, payable to wife. 442.

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STATUTE OF FRAUDS.**ANTE-NUPTIAL CONTRACT.**

Marriage alone is not such partial performance as will take an ante-nuptial agreement out of the statute. 319.

LAND.

Parol gift of, in pursuance of which the donee holds possession for over twenty years, and expends money in improvements, will be enforced in equity. 319.

MEMORANDUM IN WRITING.

What is sufficient to comply with the statute. 192.

What is insufficient. 511.

OPTION.

Contract to sell stock at the end of three years, with an option to the purchaser to call it at any time, is not within the prohibition of a statute which forbids an action upon any agreement "not to be performed within a year," unless in writing. 511.

PAROL AGREEMENT.

By purchaser to pay the price to a third person in liquidation of a debt due the latter by the vendor, is not within the statute. 255.

STOCKBROKERS. See NEGOTIABLE INSTRUMENTS.**REFUSAL TO SELL.**

Renders broker liable to principal for the loss resulting from the failure to obey instructions, although when directed to sell the principal is indebted to him in an amount greater than the market value of the stock. 256.

STOCK EXCHANGE.**SEAT.**

In Stock Exchange is property and liable for the owner's debts. 448.

SUNDAY LAWS. See **RAILROADS, TELEGRAPHS.****ANIMALS.**

Recovery may be had for injury inflicted by dog upon one traveling on Sunday. 165.

Also for injury caused by negligently alarming horse. 166.

Also for injury inflicted upon horse by one who has hired him from a liveryman for Sunday driving. 166.

Otherwise in Maine and Rhode Island. 168.

CARRIERS.

In Massachusetts, recovery cannot be had by one injured by the negligence of a carrier, while traveling on Sunday. 162.

But the great weight of authority is otherwise. 163, 169.

DAMAGES.

Not aggravated, because inflicted by one violating the Sunday law. 169.

DEGREE OF CARE.

No greater diligence is required of one violating a Sunday law than when performing the same act on a week day. 166.

DELIVERY.

Of contract on Sunday, renders it void. 731.

JUDGMENT.

Entered on Sunday, is void at common law. 511.

LABOR.

One injured, while performing labor on Sunday, by the negligence of another, is not estopped from recovery. 165.

Except in Massachusetts. 165.

RAILROAD EMPLOYEE.

Brakeman, engaged in common labor on freight train, in pursuance of a general contract with a railroad, and injured by the latter's negligence, may recover for such injury, notwithstanding the fact that it was sustained upon Sunday. 148.

SHAVING.

Whether shaving for hire on Sunday is a work of necessity, is a question for the jury. 795.

SUNDAY NEWSPAPER.

Contract for advertising in, is unlawful and incapable of ratification. 795.

TRAVELING. See **CARRIERS.**

One sustaining an injury from a defect in the highway, while traveling on Sunday, cannot recover in Massachusetts. 158.

Unless traveling for purposes of necessity or charity. 159.

Rule the same in Vermont. 160.

And in Maine. 161.

This rule has not been followed in other States. 162, 163, 169.

Nor by the Supreme Court of the United States. 162.

TRIAL BY JURY.

Right to, does not extend to the offence of laboring on Sunday. 511.

TAXATION. See **CONSTITUTIONAL LAW, LIQUOR LAWS.****COLLATERAL INHERITANCE TAX.**

May be imposed by a State upon the value of U. S. bonds. 511.

EXEMPTION.

Granted by the charter of a railroad company, does not pass under a judicial sale of its "property and franchises." 668.

FRANCHISE.

Granted by the U. S., is not subject to State taxation. 256.

POST TRADER.

On Indian reservation is exempt from local taxation. 128.

YOUNG MEN'S CHRISTIAN ASSOCIATION.

Building of, is not exempt. 575.

TELEGRAPHS. See **TELEPHONES.**

DAMAGES.

Failure to deliver message to physician renders telegraph company liable for increased suffering and injury to feelings caused thereby. 128.

Mental anguish is a proper element of damage for delay in the delivery of a telegram. 319.

And for breach of a contract to transmit money. 511.

DELAY.

Damages for delay in delivery of a message to a physician, and the reasonableness of the rules causing such delay, are both questions for the jury. 795.

LICENSE TAX.

Cannot be imposed by State or municipal authority, upon a telegraph company, whose lines are used for the transmission of interstate messages. 795.

LIMITATION OF LIABILITY.

Stipulation that a telegraph company shall not be liable for negligence in the delivery of a message, unless claim in writing is presented within sixty days, is against public policy and void. 512.

RECEIVER.

Of message has no contractual relation with the telegraph company, and, if injured by the latter's negligence, his remedy is in tort. 448. Thus he may maintain an action for negligence in its delivery. 512.

REPEATED MESSAGE.

Stipulation limiting liability, if a message is not repeated, does not apply to an action for delay in delivering an unrepeated message. 319.

SUNDAY MESSAGE.

Failure to deliver, does not render the company liable for penalty, unless a necessity for its transmission exists, and the company has notice of such necessity. 319.

STIPULATION.

In telegraph blank, that the company shall not be liable for mistakes in transmitting messages, caused "by the negligence of its servants or otherwise," is against public policy and void. 732.

TELEPHONES.

ACKNOWLEDGMENT OF DEED.

By married woman through a telephone is valid, in the absence of fraud, duress or mistake. 795.

DEFINITION.

In general sense, "telephone" applies to any instrument or apparatus transmitting sound beyond the limits of ordinary audibility. 65.

In secondary and popular sense, it is a generic term applied to the apparatus, as an entirety, used in the transmission and reception of telephonic messages. 65.

DISCRIMINATION.

Telephone company is a common carrier and bound to treat all alike. 70, 72.

EMINENT DOMAIN.

Erection of telephone poles and wires is a public use, for which private property may be appropriated. 66.

EVIDENCE.

Party receiving message through medium of operator may prove, in a subsequent suit between himself and sender of message, what was said by the operator, the latter having forgotten. 75.

EXCLUSIVE CONTRACT.

To furnish telephonic facilities to one telegraph company, is void. 796.

HIGHWAY.

Erection of poles on highway is such an additional burden upon the fee that compensation must be made to the owner. 67.

But not so where the fee is in the public. 67.

TELEPHONES—(continued.)

RAILROADS.

Where line is constructed along right of way of railroad, the latter, as well as the land owner, is entitled to compensation. 68.

But a railroad may construct a line for its own use without incurring additional liability to land owner. 68.

REGULATION.

Legislature has power to limit the price charged the public for use of instrument. 72.

Such regulation is constitutional. 141.

RULES.

When reasonable, must be obeyed by party using. 73.

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Tennessee. 400-1.

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Virginia. 406-7-8.

Wisconsin. 408-9-10.

TELEGRAPH.

Includes "telephone" within its meaning, where used in statutes. 65.

WIRES.

Stretching through air, over premises of another, is an illegal use, and the land owner is entitled to damages. 69.

Though this question has not been directly decided. 69.

TENDER.

CERTIFIED CHECK.

Does not constitute a sufficient tender. 668.

TRADE-MARKS.

ASSIGNMENT.

Of business, with debts and plant, includes trade-mark used in such business. 192.

"COUGH CHERRIES."

May be appropriated as a trade-mark. 796.

TREATIES.

ACT OF CONGRESS.

Violation of a treaty does not constitute an objection to the validity of an Act of Congress, which can be recognized by the judiciary. 668.

SUPREME COURT OF UNITED STATES.

Cannot enforce treaty with foreign nation, which U. S., as a sovereign power, has chosen to disregard. 448.

TRUSTS.

RESULTING TRUST.

Arises, where a testator is induced to devise property to his wife by

TRUSTS—(*continued.*)

her promise to dispose of it in a particular way, and, after his death, she fails to perform such promise. 256.

And from a devise, made upon a private understanding that the devisee will apply the devised estate to some purpose designated by the testator. 319.

But not out of an agreement between husband and wife, by which he takes title in his own name, paying part of the purchase money out of his own funds, but agreeing to hold for his wife's benefit, and she subsequently pays the balance. 512.

USURY.

ADVANCE.

By commission merchants, the borrower agreeing to pay, in addition to interest, a commission of 50 per cent. more than the usual rate, is a usurious transaction. 256.

INTEREST ON INTEREST.

Stipulation for interest on semi-annual payments of interest, if not paid when due, does not render a contract usurious. 384.

MORTGAGEE.

Purchasing at foreclosure sale, subject to a ground-rent of specified amount, cannot defend to such ground-rent upon the ground of usury. 796.

WASTE.

CLAY.

Taking from soil and manufacturing into bricks, to be sold, is waste. 192.

WATER-RIGHTS.

CORPORATION.

Under what circumstances a private corporation will be enjoined from taking water from a stream for the purpose of supplying the inhabitants of a borough. 512.

NON-USER.

Of an exclusive right, may operate as an estoppel. 668.

RIPARIAN OWNERS.

Are each entitled to a reasonable use of the water of a stream flowing through their lands, for domestic, agricultural, or manufacturing purposes. 732.

WILLS. See TRUSTS.

AFTER-ACQUIRED PERSONALTY.

Passes under prior will. 128.

BEQUEST TO DAUGHTER.

To take effect in the event of her becoming a widow, "or otherwise becoming lawfully separated from her husband," is not void. 796.

BOND.

Bequest of, carries an overdue interest coupon attached. 576.

BUSINESS OF TESTATOR.

Carried on by the executor, under a direction in the will, renders the estate liable for goods purchased on credit by the executor, in the course of such business. 796.

CANCELLATION.

Of will, revoking all former wills, does not revive a prior will. 320.

CONDITION.

That devisee in remainder shall live with and be under the sole care of testator's sister, is valid. 576.

CONTINGENT REMAINDER.

When given. 320.

CONVERSION.

When not worked. 576.

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DECLARATION OF TESTATOR.

When admissible in an issue to try the validity of a will, and for what purpose. 256.

DEVISE.

When life estate is given. 64.

To one in fee, but should he "depart this life without leaving lawful issue to survive him," then such "property as would have fallen" to him, shall be given to another, limits the death of the first taker to the testator's lifetime. 320.

DIOCESE.

Devise to a diocese of P. E. Church, which, after the execution of the will and before the death of the testator, separated into two independent dioceses, will be divided equally between the new dioceses.

512.

ESTATE IN FEE.

What words in a devise give a fee simple estate. 256.

Given by devise to one, with the restriction that she shall not "have power to sell, but may leave the same to her children." 320.

FAMILY.

When a bequest is conditioned upon the legatee's not marrying into the "family" of a person named, marriage with one of the children of such person is meant. 192.

INCOME OF FUND.

Gift of, passes fund itself. 192.

MURDER OF TESTATOR.

By a legatee, for the purpose of preventing the revocation of the will, renders the legacy void. 796.

PROBATE.

In one State of a will devising land in another, is not conclusive upon the courts of the latter State. 320.

REAL ESTATE.

Does not pass under a direction to convert and distribute "all my property, consisting of bonds, mortgages, ground-rents, stocks and personal effects." 576.

REMAINDER.

When vested. 512.

RULE IN SHELLEY'S CASE.

Applies to leasehold estates. 512.

"SURVIVING BROTHERS AND SISTERS."

When construed not to refer to death in the lifetime of the testator. 732.

TESTAMENTARY CAPACITY.

What is insufficient evidence of. 384.

A test of, is the capacity of the testator to remember the property he is about to dispose of and the objects of his bounty, and to understand the nature of the business in which he is engaged and the manner in which the will distributes his property. 732.

A belief in spiritualism does not indicate testamentary incapacity. 732.

UN SOUNDNESS OF TESTATOR'S MIND.

Not affecting the character of a will, will not in itself prevent the will from being adjudged valid. 796.

VOID BEQUEST.

Bequest of library, together with testator's residuary estate, to the mayor of a city and the presidents of two medical colleges and their successors, in trust forever, for the purpose of founding a public library, is void. 320.

VOID DEVISE.

Devise to trustees for the use of a charitable institution to be incorporated within ten years by special act of the legislature, is void for uncertainty. 448.